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The Raid of the Radicals on State Regulation

What the state commissioners think of the efforts of the camel of Federal control to poke its nose under the tent of state regulation

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ON April 12, 1861, a little band of men in the public service, grouped on a tiny island known as Fort Sumter, lying in the beautiful harbor of Charleston, South Carolina, figured in an immortal episode of history when they gallantly replied to the opening guns of an attack that was launched against them from the forts across the bay, and thereby entered upon a conflict that shook the nation to its foundations.

By a curious, not to say dramatic coincidence, seventy years later—on November 12, 1930, to be specific—another little band of men, also in the public service and this time composed of public service commissioners from nearly every state in the Union, grouped on the same little island in the course of the entertainment program provided for them by the good citizens of Charleston, during the convention of the National Association of Railroad and Utilities Commissioners, on the very day that a political attack was launched upon the system of public utility regulation which these commissioners represent.

A new campaign against the present system of state regulation by commissions has begun.

THE foundations for this present campaign were laid by some of the state elections of November 4th, which swept into public office men who are ranked among the most outspoken critics of state regulation, including several of the more radical group who have aligned themselves frankly with the advocates of government ownership and operation on the strength of their assertion that "state regulation has fallen down."

That the election of most, if not all of these candidates to public office, may, upon careful analysis, properly be attributed to other factors—such as the wet and dry issue, the unemployment situation, as well as to local political considerations—than to their economic principles and theories, is beyond reasonable doubt. Yet the mere fact of the election of these men has furnished sufficient incentive, superficial as it may be, to the more radically disposed group to launch an assault against state commission regulation on the ground that they are acting in accordance with what they are quick to construe as a "mandate from the people."

THE keynote of this campaign was fired, significantly enough, by Governor Franklin D. Roosevelt of New York, on the very day that the state commissioners stood on that same historic spot at Fort Sumter that came under fire in 1861.

Asserting that certain groups in the United States were seeking to destroy the work of the regulatory commissions and referring to the social conflicts that are raging within the country's borders, Governor Roosevelt observed:

> "Today in this field of war, two armies are drawn up—one aiming to destroy the present system of regulation, the other aiming toward the development and distribution of these utilities at a lower cost for the primary good of the great mass of the people."

ON the side of this latter group are definitely lined up the state regulatory bodies. That their efforts "toward the development and distribution of these utilities at a lower cost for the primary good of the great mass of the people," have been successful is amply attested by facts that are readily accessible. During the past ten years the electric utilities have not only undergone an enormous expansion but the rates have been steadily declining —and this in the face of the steadily rising prices of all other commodities. So also have the gas utilities been made more readily accessible to the people and at lowering costs; if the decline in the gas rates during the same period has been somewhat less than in the electric utilities, the reason may be found in the technical problems involved in extending the gas service to greater numbers of customers in territory not heretofore served. Only in the field of the street railways have rates kept pace with the declining value of the dollar, and this has been due to factors—among which congested traffic and the rise of motor vehicle transportation are foremost—which are beyond the control of regulatory bodies; yet even in this field of service the transportation facilities have been appreciably expanded and made more generally available to the masses.

ON the side of those who aim to "destroy the present system of regulation" are lined up those who seek to undermine the sovereignty of the states by strengthening the force of the Federal arm; by extending Federal regulatory powers over utilities operating within the states, in usurpation of the authority of the state commissions. At least some of the proponents of this policy are actuated by the desire to weaken, to discredit, and finally to replace state regulation as a step toward the concentration of regulatory powers in Washington and ultimate government ownership and operation.

THE state commissioners are viewing this trend with justified apprehension. It is both a challenge to the efficacy of their work as well as a threat to the present system of commission regulation of which they are the exponents. If this drift toward Federal regulation is permitted to grow unchecked—(and the writer is not one of those who believe that sound public opinion will allow it to attain any menacing proportions)—and if Congressional legislation and administration of utility regulation is to be extended along the lines that are now being laid down for it by some of our more radically-disposed lawmakers, the sovereign powers of the states will be further undermined, the states themselves will be relegated to mere administrative units in the dispensation of policies that have their source in the national Capital at Washington, and the state commissions will be allowed to exercise but nominal authority if, indeed, they are not, in the course of time, entirely abolished.

The public service commissioners are keenly conscious of the character and import of the opposition that is looming in the path of state regulation. That they are not minimizing its danger is evidenced both by their foresight and also of their appreciation of the responsibility that rests upon their shoulders. Throughout the entire period of the gathering of the commissioners in Charleston (a gathering that included more commissioners and more commission staff members than any of the forty-two conventions held in the history of the association) a definite and persistent note of disapproval was expressed toward Federal encroachment upon state preserves—or as one speaker picturesquely termed it, of "the camel's nose of Federal control appearing under the tent of state authority." This opinion attained such momentum that it was

¶ "IT *was the general consensus of opinion—if indeed it was not the unanimous consensus of opinion—that no legislation should be enacted to enlarge the jurisdiction of the Federal Power Commission at the expense of the state authorities. It is the opinion of the state commissioners that the existing Federal Power Commission law embodies features, which, if stretched to their limits (as is the habit of Federal authority) will encroach upon the state domain.*"

finally set down in written words which were submitted to the commissioners in the form of a resolution, on the last day of the convention. The resolution read as follows:

> "RESOLVED, That this association is unalterably opposed to any form of Federal legislation which proposes that enlargement of Federal authority by the creation of new agencies, or the extension of the authority of present agencies, whereby the regulatory authority of the state commissions would be interfered with in fields in which they are now adequately functioning."

The resolution was not only the first one to be submitted to the commissioners, but it was adopted without a voice raised in dissent.

It was, in effect, the gun fired by the state commissioners in answer to the attack launched against them.

BUT let us be specific. Let us select definite illustrations of just how the "camel's nose of Federal control" is appearing under the tent of state authority.

Take the Howell Bill, for example —a bill sponsored by a member of the Senate who has been an outspoken advocate of government ownership and operation.

The Howell Bill has become a factor to be reckoned with in the consideration of the "problem of the railroads." These carriers are facing a most serious economic situation, due in part to the character of the regulation to which they have been subjected by the Interstate Commerce Commission, in part to the rapidly-growing competition which they are meeting from the short haul motor bus and motor truck; and in part to certain features of the Federal Transportation Act of 1920.

This act, which has often been referred to as a "great piece of constructive legislation," was apparently designed on the theory that it would insure to all the railroads a fair return, by permitting certain groups of railroads to earn (if possible), a return on the aggregate value of their property. If some of the larger railroads earned more than a fair return, the excess of earnings over a fair return could be "recaptured" by the Interstate Commerce Commission. One half of these earnings are to be available for loans to the weak railroads, and one half are to be available for surplus, to be retained by the prosperous railroads.

THE National Association of Railroad and Utilities Commissioners, ever since 1921—a year after the Transportation Act was passed—has condemned this provision of the law (known as Section 15a), as uneconomic and unsound. The state commissioners believe that the weak railroads can receive little if any benefit from the act, as none of the surplus of the prosperous roads, "recaptured" by the Interstate Commerce Commission, can be turned over to them. They are merely allowed to borrow it, at a specified rate of interest which may not be attractive. Moreover (in the opinion of the state commissioners), this recapture provision of the law is not for the benefit of the shippers, some of whom may be overcharged.

The immediate attention of the 1930 convention was directed to the Howell Bill, which, among other things, would modify the recapture

To Discredit State Regulation Is One of the Aims of the Government Ownership Advocates

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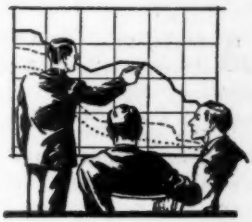

provisions of the original 1920 law in an important respect.

Under the present law, if any railroad receives in any one year a net operating income in excess of 6 per cent of the value of its used and useful property, one half of this excess is "recaptured" and paid to the Interstate Commerce Commission. The Howell Bill makes the recapture period two years instead of one, but provides that all of the excess income on a specified rate base, rather than on value, shall be held in trust, *one half for the United States,* and one half for the security holders of the railroad.

So far as the part of the fund to be held for the United States is concerned, the Howell Bill provides that this sum shall be expended with the approval of the Interstate Commerce Commission, not in loans to weak railroads as provided by the present law, but in extensions and betterments that are not to be included in the rate base of the individual railroads, or in the "aggregate rate base" of the group of railroads for which rates are made.

Just what does this mean?

It means that the Federal Government will slowly, and subtly acquire ownership of the more successful railroads, and will pay for them out of the recaptured earnings of the railroads themselves. As John E. Benton, general solicitor of the association, has aptly expressed it:

> "Many members of the association will particularly oppose the bill because it will operate to give the government partial ownership of those railroads which earn recapturable excess. While this ownership will be small at first it will be a constantly increasing interest, and will naturally be in those roads which are most favorably located with respect to operation and traffic. If this interest becomes large, it may be used as an argument in favor of complete ownership in all roads."

To this method of intrusion of the camel's nose of Federal control under the tent of state authority the state commissioners take exception.

In the formal resolutions adopted by the convention, the commissioners reaffirmed their contention that Section 15a should be repealed, and they specifically opposed the recapture provisions of the Howell Bill.

AGAIN, take the case of railroad consolidation. Honorable Charles Webster, the retiring president of the National Association of Railroad and Utilities Commissioners, stressed the significance of this problem in his address to the Charleston convention when he observed:

> "We cannot but view with apprehension the decline in freight and passenger earnings of the carriers and their effort to recoup these losses by increases in rates and retrenchment in expenditures by the closing of shops, of small stations, the withdrawal of train service, all of which means the discharge of thousands of men who have given their life work to railroading. This not only affects the employees directly, but the public as a whole. The carriers are in a much different position now than a few years ago, as they have strong competition in the trucks and busses."

It may be remembered that it was in the field of railroad regulation that the "camel's nose of Federal control" first appeared. Successive encroachments on this field by the Interstate Commerce Commission have left but a vestige of state authority over rail carriers. Now wholesale consolidations are contemplated under the force of orders of the Interstate Commerce Commission, approving consolidations of railroads into a few leading groups.

How will this step—if taken—affect the remnant of state control?

Aside from the economic defects of such consolidations which are effected by compulsion and which do not come as the natural result of conditions and circumstances, the Association's committee on railroad consolidation professed to see in the proposed Federal program a strong centralizing process within the corporate structures of our railroads that is just as adverse to local public interest as Federal regulation is to local state regulation.

In other words, compulsory consolidation will be to railroad management what Federal control is to state control.

HONORABLE John McCardle, Chairman of the public service commission of Indiana, reporting for this committee, said:

> "One of the unfortunate effects of a consolidation is to remove the man charged with the operations of the railroad farther away from immediate contact with its patrons, and because of this condition the maintenance of cordial relations becomes increasingly difficult. Shippers and patrons of the railroad are coerced to discuss their problems and difficulties with subordinates, who relay the information to their superior, who alone has the authority to make decisions. This proves to be very unsatisfactory from the shipper's standpoint. His relations with the railroad grow more and more distant and less and less cordial."

A bit later in his report, Commissioner McCardle hit the Federal camel squarely on the nose when he stated:

> "A considerable portion of our citizenship fears that Congress, in its eagerness to help the railroads, has placed a greater emphasis upon the financial welfare of the carriers than upon the happiness and welfare of the people as a whole. . . . There is no question but what the sovereign

rights of the individual states should be protected against the encroachment of Federal authority. It would appear that, so far as transportation conditions are concerned, the state regulatory bodies are the proper agencies to oppose such encroachment."

Back of all this discussion of rail consolidation lurks, of course, the fear that this centralizing process is but the preliminary step to United States operation of the railroads. Commissioner Charles Webster stated his fears, which are shared by many others, that rail mergers might ultimately lead to government ownership, "which," (he added) "no man who did business during government operation again desires."

But the conflict between state regulation and Federal regulation does not confine itself to the railroads. There is a conflict between Washington and Main street as to whether the Interstate Commerce Commission or the state commissions have authority over such matters as construction, abandonment, and security issues of the electric railways. That the state commissioners sense this conflict was evidenced when they passed a resolution asking Congress to amend the Interstate Commerce Act so as to eliminate the jurisdictional confusion that now exists and to dissolve these ambiguities in favor of state control.

In the resolution which expressed the attitude of the state commissioners toward the extension of Federal powers into the states, it was specifically stated that such extension was opposed only in those instances when "the regulatory authority of the state commissions would be interfered with in fields in which they are now adequately functioning."

In certain situations, where the failure of Congress to exercise the exclusive jurisdiction of the United States over interstate operations has resulted in a loophole through which state regulation is being evaded, the state commissioners have long sought Federal legislation, but it has sought Federal regulation that is supplementary to and not a duplicate of Federal control. Federal regulation, they believe, should be the handmaiden and not the rival of state regulation.

The control of the interstate motor carrier presents just such a situation.

As far back as 1925, the state commissioners, in convention assembled, petitioned Congress to pass laws for the regulation of the interstate bus. During that five years more than a dozen bills were introduced in Congress. The commissioners' committee on legislation lent support to four of these measures. There were the Cummins Bill and the Watson Bill in the Senate, the Parker

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Bill in the House, and the Parker-Couzens Bill which is now before Congress and came near to enactment during the early 1930 session. Honorable A. R. McDonald of Wisconsin, chairman of this committee, waged a valiant fight before House and Senate Committees to prevent the intrusion of certain suggested amendments into the Parker-Couzens Bill.

The Charleston convention resolved to support the Parker Bill but refrained from approving certain proposed amendments, which it was felt might jeopardize state powers of regulation within the motor bus field. But even here the menace of centralization is present—although the Parker Bill was recommitted for future consideration to the committee on Interstate Commerce by a vote of the Senate on December 4th, and may not come up again during the present session.

But however dangerous the menace of Federal regulation may be to state authority in the field of transportation utilities, the danger of congressional legislation to supersede the work of the state commissions in the field of interstate gas and electric transmission appears at present far more imminent.

On January 28, 1930, Senator James Couzens of Michigan, introduced Senate Bill No. 3869 for the regulation of interstate power operations through the nominal agency of the Federal Power Commission. This measure embodies some provisions that may possibly aid the state commissions in their efforts to regulate local subsidiaries.

But some of these provisions give to the Federal Power Commission broad powers over the rates and service of electric utilities that operate in interstate commerce.

True, these powers are to be exercised in the first instance by joint boards composed of representatives which may be nominated by state commissions, but the "camel's nose" enters with the provision that final power will rest with the Federal Power Commission which sits in the Nation's Capital.

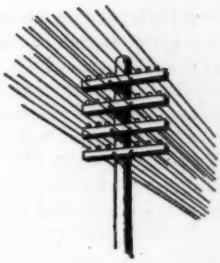
Senator Couzens, in an exclusive interview published in PUBLIC UTILITIES FORTNIGHTLY, gave the impression that his bill will make it possible for the actual interstate regulation to be done by the state commissioners themselves acting jointly under a mere Federal title in order to satisfy constitutional requirements. But it is the opinion of the majority of the state commissioners that these Federal powers would disable the state commissions and prevent them from regulating local rates and service.

The Association at its convention in Glacier Park, Montana, in 1929, declared itself "unalterably opposed" to any enlargement of Federal authority to the exclusion of existing state jurisdiction.

It will be recalled that President Hoover, in his message to Congress in December, 1929, pointed out that 90 per cent of all power generated and distributed is intrastate in character and subject to regulatory systems set up by the state; the President expressed his opinion that this exercise of state authority should not be intruded upon by Federal action, but that Congress should confine itself to

Federal Regulation Should Not Be Further Extended into the Field of Telephone Operation

"WHILE Federal regulatory authority over telephone and telegraph companies is now vested in the Interstate Commerce Commission, the state commissions are not at all convinced that the Federal powers over telegraph and telephone companies should be increased in the manner proposed in the redrafted Couzens' Bill. The state commissions, at the hearing before the Senate Committee on Interstate Commerce in February 1930, demonstrated beyond any reasonable doubt that no public interest, necessity or convenience, demanded an extension of Federal control in the field of telephone operation."



situations beyond control of the states requiring regulation.

The state commissioners expect the administration to live up to those pledges. They expect that any Federal interference with the authority which is now being exercised by the several states, whether in the form of the Couzens interstate power bill or any other proposed legislation, will not be permitted to become law. The Charleston convention resolved to continue its opposition to such congressional action.

Most of the commissioners undoubtedly agree with their general solicitor, Mr. John E. Benton, that the Couzens power bill is not of itself objectionable if the two clauses which might be construed against authority of the state commissions are so redrafted as clearly to resolve all doubts in favor of the commissions.

To what extent, if any, the Federal Government should be called upon to aid in the regulation of interstate natural gas operation caused some conflict among the commissioners themselves. Some of the commissioners believe that Federal action in this field is unnecessary, that the existing power of the state commissions is sufficient to dispense regulatory justice. On the other hand, some believe that supplemental Federal legislation is necessary to patch up the loose ends of state regulation and make the latter more effective, with strict regard, of course, to the jurisdictional privileges which are now exercised by state bodies.

The views of the first group were set forth by Major Alexander Forward, formerly chairman of the State Corporation Commission of Virginia and now managing director of the American Gas Association; in his address at Charleston, he pointed out what he believed to be adequate existing powers of the commissions for

the protection of the public in regulating the rates of gas companies using gas supply shipped in interstate commerce. He observed:

> "I cannot but believe that the establishment of such jurisdiction in a Federal bureau must necessarily to a great degree curtail and hamper the jurisdiction which the various state commissions, the local bodies, now exercise and are much better fitted to exercise than any Federal body. It is my opinion that even local jurisdiction and the matter of local rates will be affected the moment that the Federal Government begins to control the price in interstate commerce of natural gas. The establishment of such Federal jurisdiction is one more step toward national control of local matters. If in general, when the state commissions, the local bodies, are fixing their rates to local consumers, their jurisdiction must in all cases be immediately thrown back upon the question of the price for transmitted natural gas, which price is dependent upon the act of some Federal commission or body, will it not be a fact that the jurisdiction of the local body, will necessarily be deferred until the gate rate has been fixed at Washington? Furthermore, any rate fixed either by the Interstate Commerce Commission or some other regulatory body will, if the matter has become one of serious contention, be appealed to the courts, and while it rests with the courts for determination the local state commission will be delayed in exercising their important jurisdiction."

THE committee on service of public utility companies, headed by Honorable Thomas E. McKay of the public utilities commission of Utah, filed a report which originally contained a passage that bore out Major Forward's ideas; it pointed out the growth and extension of natural gas transmission and distribution in the United States during the last two years and added:

> "Of course, much of the gas thus being transported is being carried in interstate commerce, and because of this additional service being involved in interstate commerce, it may be argued by the proponents of Federal bureaucracy that it is an additional reason for Federal regulation of all utility service. The fact is, however, that the various state commissions are quite alive to the proper regulations of this service, as well as the others which involve transportation of their product in interstate commerce, and all are very confident that proper, adequate regulation can be had through state commissions."

The views of the opposing group were set forth by Commissioner Frank Morgan of Alabama, who told the convention that he considered the need for supplementary Federal regulation for natural gas more pressing than the need for such laws in the field of electric power.

Although he was reporting for the committee on interstate rates, Commissioner Morgan's views were shared by some of the other commissioners, notably those from Kansas, who mentioned the difficulty of regulating local gas rates in cases where the wholesale supply was bought by distributing gas utilities from interstate pipe line carriers.

As a result of this objection, the section of the original report of the service committee here quoted was changed by the committee itself at a special meeting; the amended language is as follows:

> "Since the state has no control over the price at which the pipe line company sells the gas to the distributing

¶ *"In certain situations, where the failure of Congress to exercise the exclusive jurisdiction of the United States over interstate operations has resulted in a loophole through which state regulation is being evaded, the state commissioners have long sought Federal legislation, but it has sought Federal regulation that is supplementary and not a duplicate of Federal control."*

companies, this association urges Congress to enact appropriate legislation for the regulation of such prices."

Regardless of this difference of opinion, however, both sides agree that Federal action should be strictly limited to the task of covering only that portion of the regulatory field which is beyond the control of the states.

Attempts to thrust the camel's nose of Federal regulation under the tent of state regulation of the communication utilities have, temporarily at least, been allowed to rest. Telephone regulation is threatened by complete Federal domination in the Communications Bill proposed by Senator Couzens in 1928.

Mr. John E. Benton, reporting for the general solicitor's office, told the state commissioners at Charleston that the opposition from the state commissioners and other sources had been so formidable that the senate committee on interstate commerce had not yet made a report on the bill, and that Senator Couzens is now attempting to carry through a very different legislative program. As redrafted, the bill is proposed to extend only to radio, telephone and telegraph companies, and will avoid invasion of the field of electric power and light regulation in which the state commissions are now adequately functioning. While Federal regulatory authority over telephone and telegraph companies is now vested in the Interstate Commerce Commission, the state commissions are not at all convinced that the Federal powers over telegraph and telephone companies should be increased in the manner proposed in the redrafted Couzens' Bill. The state commissions, at the hearing before the Senate Committee on Interstate Commerce in February 1930, demonstrated beyond any reasonable doubt that no public interest, necessity or convenience, demanded an extension of Federal control in the field of telephone operation. The utter lack of such necessity is best shown by the reports made by the Interstate Commerce Commission on this subject to the various congressional committees which have given it consideration. The sentiment of the state commissioners is in strong opposition to any feature of the redrafted Communications Bill which would circumscribe or interfere with the efficient work of state commissions in regulating telephone rates and service.

While the question of the proposed Federal Power Commission legislation was only incidentally touched upon by the state commissioners on the floor of the convention at Charles-

The Commissioners Expect the Government to Maintain Its Pledge to Preserve State Regulation

"PRESIDENT Hoover, in his message to Congress in December, 1929, pointed out that 90 per cent of all power generated and distributed is intrastate in character and subject to regulatory systems set up by the state; the President expressed his opinion that this exercise of state authority should not be intruded upon by Federal action, but that Congress should confine itself to situations beyond control of the states requiring regulation.

"The state commissioners expect the administration to live up to those pledges."

ton, nevertheless it was extensively discussed in committee. It was the general consensus of opinion—if indeed it was not the unanimous consensus of opinion—that no legislation should be enacted to enlarge the jurisdiction of the Federal Power Commission at the expense of the state authorities. It is the opinion of the state commissioners that the existing Federal Power Commission Law embodies features, which, if stretched to their limits (as is the habit of Federal authority) will encroach upon the state domain. These features, the commissions believe, should not be enlarged to the point that will bring them into greater conflict with or usurp the functions of the state regulatory bodies.

WHETHER or not holding companies could be held in adequate control by the state commissions, without the aid of even supplementary Federal interference, was another subject on which the views of the commissioners were divided.

The report of the intercorporate relations committee, however, headed by Honorable John F. Shaughnessy, chairman of the public service commission of Nevada, stated that adequate power now resides in the state and Federal commissions to protect the public in rates and service against abuses resulting from intercorporate affiliations of utility companies. The committee reported that the light of publicity itself shed by the hearings of the Federal Trade Commission and unofficial agencies is a great corrective for any intercorporate abuse, and it felt that the holding company situation was better than when it had reported a year before; further, it intimated that additional legislation by the Federal Government is now unnecessary. Utilities were urged to submit to existing regulatory efforts affecting their corporate structures and to avoid supercentralization through consolidation with its attendant dangers—not the least of which is government ownership.

IN the matter of air transportation the opinions of the state commissioners seem to be in accord. This new utility service the commissioners are apparently willing to leave to its fate, like a foundling, on the steps of Federal regulation.

The special committee on air transportation, headed by Commissioner Fay Harding of North Dakota, stated in its report:

> "If railroad operation is by its nature a form of transportation requiring interstate regulation, then air transportation, by virtue of its greater speed and other characteristics, is certainly more so."

The respective fields for the exercise of state and Federal powers are clearly defined in this report; no conflict of authority should ensue. The Federal Government should have supervision of interstate operations while the state commissions should have equal authority over operations of all aircraft within state boundaries.

Aviation, because of its inherent character, is the one utility service that is free from the jurisdictional conflict that mars the regulation of other forms of transportation.

Will it follow the course of the railroads?

THE attacks on state regulation by those who are seeking to discredit it as a step toward the substitution of Federal regulation, have begun.

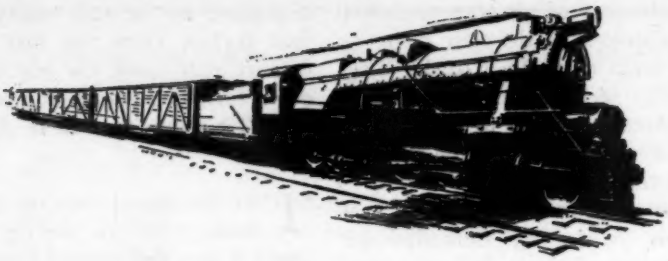
The state commissions are not unmindful either of the political motives of these attacks, nor of their objectives. During the ensuing months it may be reasonably expected that what may aptly be termed "the raid of the radicals on state regulation" will be pursued with widely-exploited vigor.

And some of the radical group have already prophesied the centralization in Washington of regulatory powers is but one step—perhaps the most important step—toward government operation and eventual government ownership.

The Early Costs of Street Railways

IN these days of modern high-power electrical equipment and luxurious street cars, the expenses of operating the early horse-car lines come as a bit of a shock. Here, for instance, is an expense sheet from the minutes of a meeting of the Fort Madison, Iowa, Street Railway Company—back in 1884, the year when the electrically operated street car made its debut:

6 cars	$2500.00
Mules	2,000.00
Harness	100.00
Hay and Oats	72.00
Construction of lines	11,109.00
Length of routes	6 miles
Wages per man per 12 hour day	1.50
Revenue per day per mule car	7.00
Expense per day per mule car	5.24



What Federal Regulation Is Doing to the Railroads

The trend toward the centralization of regulatory authority in Washington, at the expense of the authority of the states, is focusing attention upon what is likely to happen to the other forms of public utilities if they also pass under Federal control. The following article is notably significant because it reflects the viewpoint of an Interstate Commerce Commissioner.

By HERBERT COREY

THE other day I took luncheon with a member of the Interstate Commerce Commission. This is about the most important commission there is. It has the rights of high, middle, and low justice over the railroads. Whatever happens to the railroads affects every one of us.

"What will be the upshot of all this regulating activity?" I asked.

This is not a *verbatim* report of the conversation but it is accurate.

"Oh, I don't know" he said wearily. "Government ownership, perhaps. Maybe some vast, overshadowing control over all forms of transportation. Over them like a tent."

The commissioner groaned.

No man dislikes the thought of government ownership more than he does. It looks like Sovietism and Communism and bright red ruin to him. He quoted some figures he had just read that every tenth man in this country is drawing pay for helping to govern nine of us. He said that the more ways are discovered in which we can be governed the more bureaucrats there will be. They multiply like guinea pigs. Not like old fashioned guinea pigs, but like the vicious modern pig who drinks cocktails and sneers at his poor old mother.

"What can be done to head off these results?" I asked. The commissioner did not think that anything can be done. "This whole situation had its origin in too much regulation" I said.

The commissioner agreed that if

there had been no regulation there would now be a different situation. But he pointed out that we cannot stop regulating:

"There must and will be more regulation" he said firmly.

UNLESS I am wholly wrong in my reading of the facts the regulating of the railroads has almost ruined them. I am one of the unfortunate literals who adds two to two and gets four and not a cherry pie. The well meant, starry-eyed, who love regulation of the railroads have lessened the financial stability of the carriers and cramped their operations and kept them from meeting competition with competition. They have been tied to stakes while the nation has subsidized the truck and bus and boatlines that have been raising merry hell with them.

The next step is to regulate the trucks and boats and busses. May God help them!

Obviously the Interstate Commerce Commission will not stop regulating the rails. It could not if it would. Regulation and interference and centralization seems to be of the spirit of the times.

The only thing the Interstate Commerce Commission can do is to ask for power to regulate their rivals.

And if that isn't a step toward a governmental control that may end in government ownership then those of us who think that way are a set of pessimists with limestone livers. The fact that we had government control of the rails once and made a gorgeous mess of it will not deter us, for the new control will grow on us gradually. Presently some super-McAdoo will be wearing a gilt crown and issuing pink slips to govern the rates and movements of every freight and passenger-carrying device from the pipeline to the air gondola.

Let us have the argument.

NO one questions that the railroads should be subject to some form of control. Every one of us should be subject to some control, from the innocent immigrant who wants to raise a pig on his city lot to a white-whiskered bank president. The railroads once ran hog-wild. They rebated and cheated and cut rates and so delivered themselves into the hands of the regulators. But a control through the laws and the courts and interference with the operation of their properties are two different things. Nowadays the Interstate Commerce Commission is running the roads. Any railroad president who kids himself that he is the boss of his road should call for an icepack. The head of one of the great systems once said to a friend of mine:

"I have been listing the things for which I am held responsible as president. I find that for ninety-three things out of the hundred I must get some outsider's permission."

THE Interstate Commerce Commission makes the rates and the roads have to take them. Competition may be the life of trade but it is poison ivy to the Interstate Commerce Commission. It is a fair assumption —and fair or not it is my assumption —that no boat on the inland waterways could make enough money in a year to buy the captain's baby a new dress if it were not for the help of

The Real Agency that Is Running the Railroads

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the government. The government dredges the channels and canalizes the rivers for the barges and steamers. Then the Interstate Commerce Commission says to the railroads:

"You must help feed them with your freight."

All this regulating has been done, mind you, in that spirit of loving-kindness that has ruined so many lives. Americans went sweet a couple of decades ago. They were urged on by a good deal of yawp in high places, of course, but that hardly minimizes their responsibility. They got so goofy about loving their neighbors as themselves that they forgot the neighbors might not love back. The authority under which the Interstate Commerce Commission is acting was granted by Congress in the sincere belief that the greatest good of the greatest number was being thereby promoted. No one can have known any past or present interstate commerce commissioner without believing in his own belief in his task. The railroads have been regulated as unselfishly and patriotically and lovingly as is humanly possible.

What has been the result?

They have been near ruined.

IT is at least arguable that if the roads had not been regulated, but had been permitted to go on in the old-fashioned competitive way, only being restrained when they resorted to mayhem or larceny from the person, they would be at least as prosperous as they are today. The theory that for a time they flourished because of regulation seems to me simply silly. They made money because they were doing the heavy hauling for a country in which the railroad freight business doubled each decade.

If they had not been regulated, they would be in a position to fight back against their new rivals.

At present they are handcuffed and brass-booted.

Seven of the past ten years have been the most prosperous in the history of the country. Industry and commerce had gotten their feet on the ground again after the overturnings caused by the war. Lost time was to be made up. Europe very kindly stood aside for us during a part of the

period. There was a flood of profits and work. What happened to the railroads during that decade?

They barely held their own in freight carrying.

No more than that.

In the tenth year of the decade they are carrying no more freight than in the first year.

They lost one third of their passenger carrying business. In 1929 they were paid $429,000,000 less for carrying people than in 1920.

In that ten years they paid $117,000,000 more in taxes. Note the word "more."

They were able to keep on operating because they found means of saving $1,000,400,000 in operating costs. But in 1928 there were 377,000 fewer men on railroad pay than in 1920. That is, perhaps, one of the factors that helped to bring about the unemployment troubles we are enjoying today. A government commission which could put 377,000 men at work tomorrow would be immortalized in bronze. It is frightening to think of what the elimination of 377,000 men from the payrolls may have meant, or what it would mean today if they could be restored to their jobs.

THE railroads did not want to discharge these men, of course. The railroads, naturally and certainly, would have preferred so to increase their business, as the other businesses of the country were being increased, that they could have kept the 377,000 on their rolls and added other thousands. But they could not afford to do it. They have lost too much business. Their rates have been too frequently tampered with. Only a little while ago the Interstate Commerce Commission donated $15,000,000 of the railroads' money to the suffering farmer through decreased revenues for carrying wheat. Perhaps the railroads did not want to pay over $15,000,000. What of it? They are being regulated.

The Interstate Commerce Commission has ruled that a railroad should be permitted to make 5¾ per cent on its valuation.

The first eight months of 1930 show that the Class I roads earned at the rate of less than four per cent per annum. The Class I roads, mark you. The topnotch, big, lusty giants among railroads. The lesser roads are earning all the way down to deficits. The investors of this and other countries have absorbed twenty four billion dollars in railroad stocks and bonds. They are being told by such eminent railroad men as Willard of the Baltimore & Ohio and Storey of the Santa Fe that the railroads today:

"Cannot afford to make the replacements and repairs essential to satisfactory and economical operation:

"Must not be expected to spend more money in additions to systems that are already unprofitable."

WHAT will the owners of the twenty-four billion dollars of stocks and bonds think of that? I know one great insurance company, which has more than half a billion dollars worth of securities in its vaults, is seriously fretted by the situation. Another great insurance company is turning from American railroad securities to other forms of investment.

What was the basic reason for

this unsatisfactory state of affairs?

Regulation. Make anything else of it if you can. Regulation. Being sweet to every one but the roads.

Now the outlook is that the other transportation agencies will be regulated. Some juice must be drawn from the veins of the pipe-laying and air and water-waying and road-running rivals to feed into the arid veins of the railroads. The alternative is to reduce these other rivals to that same state of pale ill health in which the railroads now find themselves.

How happy we will all be when that Great Day comes!

HERE is one sample of what the Interstate Commerce Commission has done for the railroads. My friend the commissioner said that:

"The commission has saved 50,000 miles of weak and short roads to the railroad systems by permitting unifications and consolidations."

That is just as though the surgeon had said:

"Thank heaven, patient, I have saved that fine cancer."

Before we Americans grew so soft business was ruled by the ordinary laws of trade. When McGillicuddy saw that Park avenue was growing too high-hat for him he pulled down the blinds for good. If there had been a commission, he could not have done that. The commission would have said:

"Sorry, Cornelius. But there are some poor folk around the corner who simply dote on pigs knuckles and beer. You'll have to keep open. Its tough on you, Cornelius, but you know how we are. We are determined to be kind."

If a branch line ran out of business under the competitive plan, it shut up shop. Nowadays it must be operated anyhow. Most generally, at least. The Interstate Commerce Commission permits the abandonment of approximately 1,000 miles a year, but it has closed the fingers of the railroads firmly upon the other 50,000 miles. I would like to know just how much that lovely gesture has cost the railroads of the country. Even a branch line costs money to run.

And why have the branch lines run out of business in this decade of growing riches?

Because, among other things, the motor trucks and busses are hauling an increasingly larger share of freight and passenger business.

In face of that fact—a fact as full of menace to the railroads as a copperhead is filled with malice—the Interstate Commerce Commission not long ago ordered a railroad to build a branch line through a practically unpopulated country at a cost of $12,000,000. The road does not want to build that line. It so desperately does not want to build it that it is fighting the order in the courts. But the Interstate Commerce Commission had the authority to order that road built, and if the courts happen to be equally high-minded the poor road must build.

PRECISELY what is the menace to the railroads in the truck, bus, and boat competition?

It is a double barrelled one.

In the first place, the railroads are so regulated that they cannot make their own rates. They cannot fight competition with competition. The vice president of one road told of the

Will the Regulation of the Rail Carriers Be Decreased—or the Regulation of Its Rivals Be Increased?

"ANOTHER *great insurance company is turning from American railroad securities to other forms of investment. What is the reason for this unsatisfactory state of affairs? Regulation.* . . .

"Now the outlook is that the other transportation agencies will be regulated. Some juice must be drawn from the veins of the pipe-laying and air and water-waying and road-running rivals to feed into the arid veins of the railroads. The alternative is to reduce these other rivals to that same state of pale ill health in which the railroads now find themselves."

plight in which it is today. Not long ago its future seemed prosperous. Money was spent freely for rails and terminals and engines and cars. The road was solvent and growing. Its management was developing the country it penetrated just as Ed Harriman and Jim Hill helped in the development of the west. People came in; cities sprang up; industries were located.

Then the trucks and busses on the one side and the coastal steamers on the other began to bite into that business. Today these competitors have practically eighty per cent of the profitable freight business, which would have accrued to that road under the original conditions.

"We are actually hauling only nine items of freight now" he said, "and they are the nine items which are too heavy and bulky and unpleasant for the trucks and boats to take. We are going in the red deeper each year."

A RAILROAD is a common carrier. It must take whatever is offered at rates fixed by the Interstate Commerce Commission. If a truck owner does not want to carry a cargo of sheep manure, he refuses it. He is not operating a common carrier. No one can do anything about it. If a steamer captain wants to make a rate that cuts the gizzard out of the rates the railroad can afford to make, he makes that rate. There is no one to control him.

If the railroad had been free to fight for its hand in the old-fashioned way it could have held its own. The spectacle might not have been a pretty one. Many a salt tear might have been shed. But it could have protected itself. The railroads used to hold their own. They were not all bound round with loving-kindness and the Interstate Commerce Commission. Now they are told what they can do. The trucks and boat owners do what they please.

This—presumably—cannot go on.

Therefore my friend, the interstate commerce commissioner, sees as a possible and even as a logical next step some form of super-control. I am only stating the situation as he sees it. I did not invent the idea. He did.

THE other barrel of the truck and bus and boat menace is that these agencies are subsidized by the states and the nation in their fight against the railroads. The word "subsidy" may be challenged but the reality remains. Millions of dollars are being spent on the rivers and harbors for the boat and barge men. Their rights of way come to them absolutely free. I am not now speaking of the Inland Waterways Corporation, owned and operated by the government at an annual cost of millions of dollars for the stated purpose of competing with the rails, but of the immense project for the canalization of the Mississippi and its tributaries. No doubt this project is in the spirit of the times. But —

The roads are paying a large share of the cost of the subsidy given their competitors.

And they are not permitted to fight back for business.

THE railroads own their own rights of way. They pay one million dollars a day in taxes on them.

For the maintenance of these rights of way they pay two million dollars a day or more.

A large share of that daily million dollars of tax money goes directly to the upbuilding of the rivals' rights of way, not to speak of the share of the two million daily dollars paid for maintenance which gets to the same end indirectly. The Department of Commerce recently stated that approximately four thousand five hundred barges and one thousand three hundred propelled craft are in operation, exclusive of the Great Lakes. The Denison Act compels the rail carriers to accept the through routes and joint rates fixed by the Interstate Commerce Commission. The railroads complain that they rarely get their rightful share of the rate.

The subsidy for the trucks and busses is relatively greater than for the boats. Thousands of miles of new roads are being built each year. That is all right, of course. We need the roads. But another big slice of the $3,000,000 spent each day in taxes and right of way maintenance by the railroads goes toward the building and maintenance of these rival rights of way. No one pays a penny toward the cost of the railroad right of way unless he uses the road as passenger or freight shipper. Every one of us pays something daily to build and maintain the rights of way given free to the trucks and busses. That is all right. No one would have road construction shorted or slighted.

BUT last year 92,500 busses did 1,750,000,000 miles over these roads and in inter-city traffic alone carried 497,000,000 passengers. In 1929 the railroads did $75,000,000 less in passenger carrying than in the year before. The tenth year of the decade found them doing $429,000,000 less for carrying passengers than in the first year of the decade. The bus operators can make whatever rate they wish in competition with the railroads. Their rates are always cheaper

and often very much lower indeed. They are not regulated. But not long ago a Texas road tried to fight bus competition by cutting its passenger fare between two points.

What happened?

The motorbus operator went whooping to the Interstate Commerce Commission for relief. The case has not been decided as this is being written, but this much is certain: The busmen can cut rates without breaking a regulation. The railroads are regulated. They must be I. C. C.'d and passed upon.

No one knows how many motor trucks are plying over their free rights of way in competition with the railroads. Literally no one knows. A farmer who used to ship his hogs to the stockyards now takes them by truck. The next day he picks up a truckload for a neighbor or two. An ambitious youngster buys a truck and does a little hauling. Presently he has forty trucks and is carrying freight 300 or 400 miles. The National Automobile Chamber of Commerce states that in 1929 there were 826,811 trucks in operation, but no one has ever attempted to gather statistics on the business they have done in competition with the railroads.

We do know that the railroads have managed to haul in the tenth year of this decade no more freight than in the first year. That is a reliable approximation. And this was the liveliest, handsomest decade in the recent history of American business. The trucks have even taken away from the railroads a large part of the freight hauling for the automobile industry, the receipts from which at first softened the blow to the railroad auditors. That is, after all, not the point at issue.

What I am trying to hammer in is that these busses and trucks are operating under no form of regulation and the railroads are being regulated to a fare-you-well. If the roads were untied and told to go to it, they might, perhaps, fight their way free. But no one thinks that such a miracle will happen. No one ever gave up the privilege of interfering in another person's business. At least no one ever did voluntarily. It simply is not possible to believe that we will ever resign our new national privilege of regulating the railroads and governing their rates and measures and their stops and starts. But it is evident that something must be done.

Somehow or other the railroads must be saved. Owners of twenty four billion dollars worth of securities

¶ "The *truck and bus and boat are subsidized by the states and the nation in their fight against the railroads. . . .*

"The railroads own their own rights of way. They pay one million dollars a day in taxes on them. . . .

"A large share of that daily million dollars of tax money goes directly to the upbuilding of the rivals' rights of way, not to speak of the share of the two million daily dollars paid for maintenance which gets to the same end directly."

might—perhaps—put up a fight against their complete de-dollaring. I said "perhaps." In any case there are long wheat hauls and pig iron transport and coal and guano that must be freighted and which the trucks and boats do not want.

THEREFORE—being an essentially fair and loving people—the day is almost at hand when we will try to be fair and loving to the railroads by regulating the trucks and busses and boats and God help 'em! They will be pink-slipped and I. C. C.'d and tariffed and kissed. The old days of open competition and fair fighting seem definitely ended. From now on we shall be increasingly saccharine and kind. In the end each of us will be working for all the rest of us. Instead of only one man in ten getting a government job we will all have one. And we will all love one another to death.

We really should take the eagle off the coat of arms and substitute a nursing bottle.

How the First Electric Meter Was Devised

How Thomas A. Edison was prompted to devise his first electric light meter, back in the early days when incandescent lamps were very much of a novelty, has recently been told by a contributor to the New York *Herald-Tribune*. Among the first of our citizens to have his private home wired was the doughty Cornelius Vanderbilt.

The service charge for electric lighting in those days was based entirely on the number of lamps installed and not in terms of the actual amount of energy consumed. Mr. Vanderbilt did not think this was fair, and, sending for Mr. Edison, he poured forth his woes. The conversation was as follows:

"I believe that I am being overcharged for the amount of electricity that I use," ventured Mr. Vanderbilt.

"How so?" asked Mr. Edison.

"Why, you charge solely on the basis of the number of lamps that I had installed and I rarely have more than half of them turned on at any one time. Besides, I don't see how you can tell how many hours I have had any of them burning."

"Quite so; but suppose I install an apparatus that will tell me how many lamps you have used and how long they have been burning?"

"Impossible," retorted Mr. Vanderbilt.

"Well, I'll make a wager with you," persisted the young inventor. "I'll bet at the end of next month I will be able to tell you the number of lamp hours of electricity you have used."

The wager was made, and Mr. Edison devised the first convenient electric light meter, which made use of the deposition of copper on a plate. The plate was weighed before the test and then again after the test. The difference in weight was determined, and, knowing the electro-chemical equivalent of copper, the amount of electrical energy consumed could be accurately calculated.

Mr. Vanderbilt instructed all of the servants in his house to keep a careful check on how long each lamp was burned. He was shocked when he discovered that the results were almost identical with Mr. Edison's.

The Handsome and the Deformed Leg

BENJAMIN Franklin was a wise philosopher. He once aimed a dart at a certain type of critic which we have all encountered.

He said there are two sorts of people in the world which with equal degrees of health and wealth and the other comforts of life become the one happy and the other miserable.

This, he declared, arises very much from their point of view. It is the unhappy tendency for some to dwell only on what they find to be bad in life and, therefore, never look upon that which is good. They see only the defects and never the fine features of the human countenance.

His comment on this class of persons is not very flattering. In fact he goes so far as to advise abstaining from social intercourse with them as much as possible.

All of this appears in a little essay on "The Handsome and Deformed Leg," which he closed as follows:

> "An old philosophical friend of mine was grown, from experience, very cautious in this particular, and carefully avoided any intimacy with such people. He had, like other philosophers, a thermometer to show him the heat of the weather; and a barometer to mark when it was likely to prove good or bad; but there being no instrument invented to discover, at first sight, this unpleasing disposition in a person, he, for that purpose, made use of his legs; one of which was remarkably handsome; the other, by some accident, crooked and deformed.
>
> "If a stranger, at first interview, regarded his ugly leg more than his handsome one, he doubted him. If he spoke of it, and took no notice of the handsome leg, that was sufficient to determine my philosopher to have no further acquaintance with him.
>
> "Everybody has not this two-legged instrument; but every one, with a little attention, may observe signs of that carping, fault-finding disposition, and take the same resolution of avoiding the acquaintance of those infected with it.
>
> "I, therefore, advise those critical, querulous, discontented, unhappy people, if they wish to be respected and beloved by others, and happy in themselves, they should leave off looking at the ugly leg."

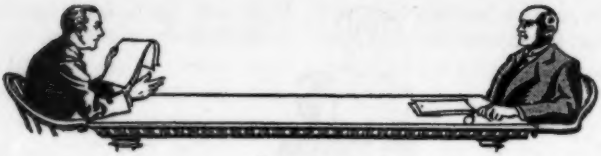
Times change but the mental make-up of the human race is undoubtedly about the same as it always has been. Franklin's advice is as good today as it was when he penned "The Handsome and Deformed Leg."

Perhaps this further admonition might be of value. Beware of the man who asserts that all legs—except his own—are deformed. It may be only his way of bragging; but it may be that he himself has a deformed leg.

One of the valuable by-products of criticism is the illumination it throws on the character of the critic. It often lays bare portions of his mental and moral structure which would otherwise be obscured from the view of his neighbors.

Sometimes this is good for the critic; but often it is not.

Henry C. Spurr



¶ OPINIONS *culled from the reports and addresses made at the 42nd annual convention of the National Association of Railroad and Utilities Commissioners, held in Charleston, S. C., from November 12th to November 15th, 1930.*

What the Commissioners Are Thinking—

—About the Railroads

Grade Crossings

"THE grade crossing situation as a whole instead of showing definite improvement is steadily growing worse.

"From the accident records of the past, it may be expected with reasonable certainty that today and tomorrow and each day during the coming year, an average of eight persons will lose their lives and more than twenty persons will be seriously injured at highway grade crossings. With the continuing increases in grade crossings and automobile registration each year, the outlook for the future does not appear encouraging, unless and until the public as well as the individual members of the various commissions and traffic bodies shall be brought to a complete realization of the magnitude of the problem and the urgent need for constructive action, and individual drivers are impressed with the necessity for extreme caution and the strict observance of signals at grade crossings.

"It is encouraging in some measure that accidents have not increased in proportion to the increase in highway traffic.

"The first essential step in any effective grade crossing program is to definitely assign authority and establish responsibility for results."

—Frank McManamy,
Chairman, Interstate Commerce Commission.

Consolidations

"INDISCRIMINATE consolidation of railroads would be a fatal mistake, and nobody but perhaps some of the bond houses would be benefited. It is true that the absorption of some of the weaker lines by the stronger would be of mutual benefit but the indiscriminate, I might say, wholesale consolidation, would be detrimental to all concerned, throwing thousands of men out of employment, ruining towns that have been built up around these roads and might ultimately

lead to government ownership, which no man who did business during government operation again desires."

—Charles Webster,
Board of Railroad Commissioners of Iowa.

"ONE of the unfortunate effects of a consolidation is to remove the man charged with the operations of the railroad farther away from immediate contact with its patrons, and because of this condition the maintenance of cordial relations becomes increasingly difficult. Shippers and patrons of the railroad are forced to discuss their problems and difficulties with subordinates, who relay the information to their superior, who alone has the authority to make decisions. This proves to be very unsatisfactory from the shipper's standpoint. His relations with the railroad grow more and more distant and less and less cordial. Finally a total lack of sympathy and understanding results. This effect is more or less intangible, but it is none the less real, and regulatory bodies who fail to take it into consideration when they are considering the advisability of permitting consolidations fail to do their whole duty.

"It would be our recommendation that this committee (on Consolidation of Railroads) formulate an act to be presented to the next session of Congress, repealing the provisions of the Transportation Act requiring the Interstate Commerce Commission to formulate a plan for consolidating the railroads into a limited number of systems, and providing for reasonable voluntary consolidations of carriers through natural processes when such proposed consolidations are approved by the different states through which such carriers operate and when they are found by the Interstate Commerce Commission to be clearly in the public interest."

—John W. McCardle,
Chairman, Public Service Commission of Indiana.

Valuation

"A TOTAL of seventeen years and an expenditure of $37,108,262 by the Interstate Commerce Commission have been required to make a valuation of the steam carriers. How long it will take, and how much it will cost, to make a valuation of other classes of carriers under methods which are now employed, even when the commission can devote the time to it, we make no attempt to estimate. Whether it shall be made or not will depend upon the disposition of Congress to make the large appropriation which the execution of the work would require.

"At the present time most of the valuation personnel of the (Interstate Commerce) Commission is engaged in work incident to the recapture of excess earnings under Section 15a. That work is so far behind that it is necessary to conduct a vigorous program in order to catch up."

—Fred P. Woodruff,
Chairman, Board of Railroad Commissioners of Iowa.

"BE *It Resolved, Further*; that it is the opinion of this association that such changes in the law should be made as may be necessary to relieve the Interstate Commerce Commission from the duty to revalue the property of car-

riers subject to the Interstate Commerce Act 'from time to time' and 'in like manner' as such property is required to be valued under Section 19a, either under said paragraph (f) of said Section 19a, or under subparagraph (b) of paragraph (6) of Section 5 of the Interstate Commerce Act, but without in any way diminishing the power of the Interstate Commerce Commission to keep informed as to the capital investment of the carriers and as to changes in the property of carriers, by requiring reports to be made by carriers which shall show such changes, and the cost thereof, and by inspection of carrier properties, accounts, and records."

—Excerpt from a Resolution Adopted by the Convention.

—About Natural Gas

Federal Regulation

"WHILE your committee has no figures to rely upon it is of the opinion the percentage of natural gas transported across state lines, compared to the total distribution of natural gas, is many times greater than the percentage of electricity transported in interstate commerce bears to its intrastate distribution. For this reason we feel that the necessity for Federal regulation of interstate natural gas pipe lines is much greater than is the case in the power and lighting industry."

—Frank P. Morgan,
Public Service Commission of Alabama.

Expansion

"DURING the past two years there has been a tremendous growth and extension of natural gas transmission and distribution in the United States. Mains have been constructed to carry gas almost unbelievable distances and this utility service is being made available in territory that only a few years ago had no hope of ever being served with this very desirable fuel. The enterprise and foresight of those responsible for this work are very commendable and they are to be congratulated for thus increasing the scope of availability of this service."

—Thomas E. McKay,
Public Utilities Commission of Utah.

Rates

"VERY frequently state commissions are called upon to make rates for the distribution of natural gas where they have no authority over the prices being paid by the local utility other than to approve or disapprove the contract between the local utility and the interstate carrier of natural gas. Under such a situation unjust discriminations between states and persons are bound to occur. The commissions are usually without knowledge of the cost of the gas to the interstate carrier and it is only by comparison with contracts in other states that they have any basis upon which to ascertain the reasonableness of these contracts."

—Frank P. Morgan,
Public Service Commission of Alabama.

—About the Telephone Companies

Service

"THE United States has the best telephone and telegraph service in the world. We are also mindful that constant improvements in telegraphy and telephony continue to make this service, which is an integral factor in the commercial life of our nation, more effective. In this connection, there are limitless possibilities in the coördination of these services with radio, and, therefore, complex problems will constantly arise that require careful and constructive consideration."

—Thomas E. McKay,
Public Utilities Commission of Utah.

Depreciation

"I WOULD suggest that committees composed of statistical and engineering experts of state commissions be formed and members be appointed from each state located within logical areas. For example, the Northwestern Bell Telephone Company, a subsidiary of the American Telephone and Telegraph Company, operates in the states of Nebraska, South Dakota, North Dakota, Iowa, and Minnesota. These states would, therefore, compose a logical committee area. Similar grouping could be made of states comprising territories served by other subsidiary companies.

"The regional committees so formed should be instructed to meet at an early date, elect a chairman and within a specified time complete the preparation of formulas outlining in detail the method of procedure, the specific statistical and historical basic data to be gathered, and also proposals as to the logical grouping of telephone properties with respect to location, size, and character of exchange, etc."

—Frank W. Matson,
Railroad and Warehouse Commission of Minnesota.

—About the Electric Utilities

Rates

"IF the average residence customer's consumption is less than 400 kilowatt hours he is paying just about the full cost to serve him. If the average residence customer's consumption is 350 kilowatt hours or less or over 1,200 kilowatt hours annually, he is paying somewhat more than what it cost companies to serve him.

"These conclusions are based on the assumption that electric companies earn a rate of 8 per cent on their investment; if the return were computed at 7 per cent, then the domestic customer with consumption between 400 and 1,000 kilowatt hours would just about pay the full cost under present rates.

"Small commercial and industrial light and power customers are paying somewhat more than their full share of the costs of service, while customers in these classes with annual consumptions above 12,000 kilowatt hours pay somewhat less than the full cost of serving."

—Adolph Kanneberg,
Railroad Commission of Wisconsin.

—About the Motor Carriers

Service

"THE equipment used by the larger companies is almost, without exception, of high quality assuring the greatest possible measure of comfort to the traveler. The busses are manned by drivers of experience who operate under strict rules having for their main purpose the greatest possible measure of safety in their movement. That there is no class of motor vehicle passengers so free from the hazards of travel as those occupying the motor vehicle engaged in the public service is best demonstrated by the record which discloses the fact that there are fewer accidents in this branch or class of service than in any other."

—Amos A. Betts,
Corporation Commission of Arizona.

Competition

"FEW, if any, question the absolute necessity of that measure of protection which will result in the maintenance of the railroad transportation systems of the country. . . . It must be obvious that encroachment of motor carriers upon the long-haul field to the same extent that they have now occupied the short-haul territory would be disastrous to the rail carriers. There has been some indication that the railroads themselves might solve this problem by the acquisition of the more important existing truck lines, but we doubt if this can be accomplished in a satisfactory manner either to the rail lines, the motor carriers, or to the general public without some measure of regulation."

—Amos A. Betts,
Corporation Commission of Arizona.

—About the Air Utilities

Regulation

"IN the proposed uniform act, submitted by this committee (on Air Transportation Regulation) at the Glacier National Park convention, we recommended an act which would give to a state department the required authority to surround the operations of all aircraft within the boundaries of a state with as much safety as is now required by the Federal department for commercial aviation. It appears, however, that the states have a duty to perform in this matter as well as in other modes of transportation, that is, to protect the lives and property of its citizens. In order that this may be done it is obvious that state laws should be so drawn as to give some person or department (preferably a person or department attached to and within the state utility or railroad commission) jurisdiction over air transportation in all its aspects, thus permitting the industry to grow without hampering it with too much regulation, and with no conflict between state, Federal, and international law or rules."

—Fay Harding,
Board of Railroad Commissioners of North Dakota.

Uniform Laws

"MAY we not profit by that experience and take this matter in hand during its developing period and require uniformity in the licensing of airmen and aircraft and surround the industry and the public with at least as much safety as is required by the Aeronautical Branch of the United States Department of Commerce? Again, we stress the importance of uniformity in state, Federal, and international law and rules governing aviation."

—Fay Harding,
Board of Railroad Commissioners of North Dakota.

—About Intercorporate Relations

The Holding Company Situation

"AS a result of the investigations that have been and are being carried on by state and Federal legislative agencies, and the attention which holding companies are receiving from state and Federal courts, including our great court of last resort, obviously conditions are becoming better understood.

"The light of publicity is itself a great corrective, and when aided by the power which the department of justice and the attorney generals of the various states have exercised and will continue to exercise, it will serve to give very substantial, if not adequate, protection to the public, and this is seemingly true, despite the fact that there is raised for consideration an important question of public policy, before noted, as to the extent to which the state and Federal Governments shall permit the concentration of wealth and financial control into relatively few hands.

"Aside from the regulation of securities in the railroad and utility fields, adequate power now resides in the state and Federal commissions to protect the public in rate and service cases against allowing those railroads and public utilities, within the respective jurisdictions of these commissions, from incurring unreasonable or excessive charges for financing, management, operation, and construction services from any source whatsoever, and in the interest of effective regulation we know that this power will be exercised.

"From this it follows that conditions are better today than at the time of our last report."

—John F. Shaughnessy,
Chairman, Public Service Commission of Nevada.

Need for Regulation

"REGULATORY commissions do not have the power to control many of the financial arrangements which utility companies can now make lawfully. If these present day lawfully permissible financial arrangements are made unlawful by statute, lower rates would result and investors in utilities would be more adequately safeguarded.

"One of the specific provisions recommended to be made into law would prevent the purchase of one utility by another at any other price than that determined fair and just by the commission.

"A second provision would prevent utilities from paying dividends when companies showed a deficit.

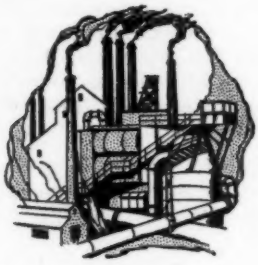
"A third provision recommended would prohibit the issuance of securities by a company except in such amounts as are necessary for the proper purposes of the utility and providing that the financial condition and plan of operation are such as to afford reasonable protection to the purchasers of utility securities."

—Philip H. Porter,
Railroad Commission of Wisconsin.

—About Government Ownership

"I AM going to discuss with you government ownership and government operation. I want to say without any fear of contradiction that I am absolutely and profoundly against government ownership. It is fundamentally wrong. It is wrong in principal."

—John W. McCardle,
Chairman, Public Service Commission of Indiana.



When, Why and How Should a Utility Company Sell Appliances?

HERE is a live question that is stirring up not only the gas and electric utilities but the retail merchants of the country and many of the labor organizations as well. It constitutes one of the most highly controversial problems within the utility field; to it may be attributed some of the most violent of the attacks that are now being launched against the merchandising methods of some of the utility companies. As a result, it has a direct effect, in many localities, upon the attitude of the public toward the local utilities as well as toward the state commissions which regulate them.

PUBLIC UTILITIES FORTNIGHTLY has had a careful and impartial survey made of this whole controversy; it will shortly publish a comprehensive series of articles that will present the case of the utilities, the merchant and of the state commissions, as one of the important editorial features of this magazine for the coming year, 1931.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

A signboard at a Connecticut railroad crossing.

"Go on and take a chance. You're unimportant."

CHARLES W. NORRIS
U. S. Senator from Nebraska.

"We cannot permit inroads by the power trust, or any other monopoly, to be made upon a free press."

JOSEPH STALIN
Dictator of Russia.

"Propaganda doesn't do anything. Constitutions and systems are changed by natural causes, not by talk or books."

A warning posted on a high-tension line of an inter-urban railway.

"Keep your hands off this wire.
"It carries 20,000 volts!
"Thank you."

OWEN D. YOUNG
Chairman of the Board, General Electric Company.

"This little globe of ours has become too small to handle most effectively our own developed agencies of communication."

An editorial in "The Gas Age Record."

"The utility employee today goes to the opera not because he must, or because it is 'the thing to do.' He goes because he likes it."

J. PAUL KUHN
Of the Illinois Commerce Commission.

"If state regulation of utilities functions properly, certainly it should always be better than absentee treatment by remote Federal regulation."

ED HOWE
Newspaper man and sage.

"To my mind the most annoying writer is the propagandist; the man who supports a doctrine for profit, and gilds ornaments in its favor."

CARL D. THOMPSON
Secretary, Public Ownership League of America.

"As each utility is taken over (by the government), wages will be raised, hours shortened, the conditions improved and the rates reduced."

ALFRED E. SMITH
Contractor; former governor of New York.

"I can sit over in my office and decide something for a contractor in twenty minutes. For the state or the city to make the same decision might take two or three weeks."

HOWARD BRUBAKER
Columnist

"The authorities are looking for a good name for the new bridge across the Hudson. Since it is the largest in the world, it should obviously be called 'The Bridge of Size.'"

FLOYD L. CARLISLE
Chairman, Niagara Hudson Power Corporation.

"The public utilities today pay the greatest amount of taxes of any group of corporations within the United States. Approximately $400,000,000 annually is paid directly by them to government agencies."

MATTHEW S. SLOAN
President, New York Edison Company.

"It would be a mistake to assume that the great body of the casual, intermittent, or convenience users of electricity are to be found preponderantly among the wage earners or those in the most moderate financial circumstances."

WILLIAM ROTHWELL BROWN
Newspaper columnist.

"Talk of a compromise between White House and Capitol on Muscle Shoals reminds us of the plan of the gentleman who wanted to spend his vacation at the seashore while his wife preferred the mountains—he always compromised on the mountains."

MORRIS LLEWELLYN COOKE
Economist and engineer.

"Even though widespread public ownership of these (public utility) properties be the ultimate solution, public ownership offers no immediate relief except as a few outstanding successes such as Ontario and Muscle Shoals and Boulder Dam emphasize current abuses."

ROLAND M. JONES
Nebraska correspondent to the "New York Times."

"He (Senator Norris) annoys the East, and Nebraska gets entertainment, amusement, and satisfaction out of keeping him where he can be the greatest annoyance possible. Moses and Grundy, the power trust, the money interests, Wall street, the social lobby do not want him in Washington, and so Nebraska takes great pleasure in shoving him down their throats."

PAUL CLAPP
Managing director, National Electric Light Association.

"It is worth noting that attacks on the electric light and power industry are not made by our customers, that is the consuming public; or by our employees or by the people at large. The attacks come from three sources: first, from some who actually believe it better to have industry owned and operated by the government; second, by a small academic element and third, by the professional radical politician, whose business is to denounce and attack."

What Others Think

The Gargantuan Railroad *vs.* the Growing Lilliput, the Motor Truck

ALTHOUGH it did not appear on the schedule, a debate developed at the Charleston, South Carolina, convention of the National Association of Railroad and Utilities Commissioners last month when Joseph H. Hays, of Sioux City, Iowa, general counsel for the Iowa Truck Owners' Association undertook to argue the case of the independent motor trucker regarding the much discussed "rail versus rubber" issue. Mr. Hays was answered, not formally, but in effect, in an address by L. R. Powell, Jr., president of the Seaboard Air Line.

The state commissioners who constituted the audience are not unanimous as to the winner of this debate, but they are unanimous in the opinion that the forensic conflict was both edifying and informative.

Mr. Hays' organization is generally regarded as largely responsible for the present motor carrier legislation of Iowa, which provides that certificates permitting trucking operations must be issued without any regard for public convenience and necessity provided certain legal formalities are complied with by the applicant.

In defending this provision Mr. Hays said that railroad companies were originally required to prove that public convenience and necessity required proposed operation before they were allowed to proceed, for the simple reason that the granting of the authority sought involved the incidental grant of the right of eminent domain for railroad right of way. Under such circumstances, the speaker agreed that it was necessary to make sure that the condemnation of private property was warranted.

This reason for the requirement of a showing of convenience and necessity, it was pointed out, would obviously not apply to motor carriers using the highways.

Another reason, disposed of by Mr. Hays, for requiring such a showing by steam and regular motor carriers was the necessity for protecting existing carriers against unwarranted competition when the volume of business is heavy.

This reason likewise, he said, does not apply to the irregular motor trucker because of the fact that he is seldom, if ever, required to make a trip unless there is sufficient volume offered to warrant the operation.

A PECULIAR factor about the Iowa motor law is that while it does not regulate irregular motor carrier competition, it does give the commission authority to fix rates. Mr. Hays explained this:

> "To first discuss the apparent weakness in my position, I wish to concede that in theory it does not seem possible to control rates without controlling competition through the requirement of a showing of public convenience and necessity, that competition is an important factor in determining volume, and that volume is a definite factor in controlling cost of operation per mile, which, of course, in theory, should be the basis upon which a rate structure should be built.
>
> "But in the practical application of the law, and in particular recognition of the fine line between the common carrier and the private carrier, it is my contention that it is more practical to adjust the rate to the average volume than to adjust the volume per unit in order to justify the rate."

One statement by Mr. Hays was startling; it was as follows:

"I venture the opinion that if it were possible to obtain data as to the number of ton miles of freight hauled by all types of motor truck, the total would equal a substantial percentage of the total moved by rail."

Mr. Hays' arguments were based on premises of legal practicability. He pointed out that under certain decisions of the United States Supreme Court, (such as the Frost case), contract carriers as such could not be regulated by compulsion.

Why not, therefore, regulate them by advice—by dinning into their ears how much they stand to lose by going into a competitive industry without experience and capital? Would it not be the better part of wisdom for the railroads, the state commissions, and competitive motor carriers to inform the innumerable John Smiths who plunge into the trucking business without experience, sufficient capital, or suitable equipment as to the risks of additional enterprise of this character?

Mr. Hays complimented Mr. Ralph Budd of the Great Northern and Carl R. Gray, Jr., of the Omaha Railroad as the most progressive railroad executives as far as the trucking situation was concerned. He quoted Mr. Gray as saying that the railroad operator was, after all, a merchandiser of transportation whose business it was to carry on his shelves what his customers wanted to buy whether it necessitated the purchase of an air line, a truck line, or a barge line.

Mr. Hays answered his own question, "What is to become of the steam railroad?" by concluding that there is a place in our transportation system for both the railroad and the truck. He intimated that the railroads would survive in better shape if they adopted the ideas suggested by Mr. Gray's position. He added:

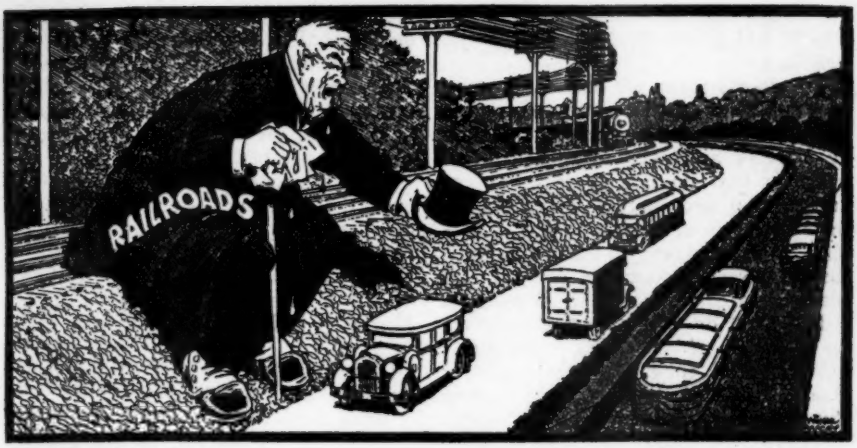
"Is it not logical to conclude that since transportation by motor truck is economically sound, in some fields, at least, and is so closely interwoven with railroad activity, the best protection to the stockholders of the nation's mighty transportation companies is for those companies to engage in the field of highway transportation themselves? This has become a reality in the bus field, as you all well know, and I venture the prediction that within a reasonable time we will see similar action by the carriers in the infinitely more important business of the distribution of freight."

MR. POWELL'S address started off with the frank assertion that out-and-out competition between different forms of transportation could never be acceptable to the American people unless and until the new form of transportation is capable of completely displacing the older form.

The speaker dwelt upon the number of burdens which are imposed upon the railroads and not imposed upon the motor truckers. The railroads must acquire and maintain private right of way; the motor carriers have full use of the highways; the railroads must show convenience and necessity before obtaining certificates; the motor carriers have no such operating restrictions. The railroads are subjected to the expensive obligations of grade separations; of compulsory hour limitation for employees; of accepting all kinds of business, and of erecting and maintaining passenger and freight terminals.

With the advent of the automobile, the progress of physical construction of highways has passed and left far behind the progress of legal control and intelligent regulation of our highways.

Mr. Powell then commented upon the unfairness and danger of this existing competitive condition between railroads and motor carriers. It is not as if the railroads could leave the cut-throat competition between motor carriers to settle itself assuming that the surviving victor would make up in all ways, including reasonable rates and adequate service, the abandoned service of the defeated carriers. Under existing conditions a fair contest is impossible because the railroads are hampered in their fight by the restrictions already mentioned and others not mentioned. In addition to this the motor carriers are unable to slip into the shoes of the



Washington, D. C., Herald.

SAYS OLD MR. RAILROAD—"IF THOSE LITTLE THINGS DON'T STOP RUNNING, I'LL BE RUINED"

railroads and serve in its entirety the shipping requirements of the public.

The speaker stated:

"Tested by its present state of development and so far as can be seen by its future possibilities, it can do no more than cripple its competitor and create a condition where the latter will be faced with the alternative of either rendering inadequate and unsatisfactory service, or of increasing its charges for that portion of the service which it alone can economically perform."

REMOVE all the handicaps of the railroads, legal and otherwise, said Mr. Powell—allow a fair fight—and we will see how quickly the railroads accept the challenge to commercial battle. He added:

"America owes much to her railroads. They have been pioneers in the development of her natural resources and until recent years have provided the principal means for carrying on her commerce. Their destiny has not yet been achieved. The railroads seek no special privileges or preferred consideration. They do ask what they are sure a fair-minded public, when it understands the truth, will grant them, that there shall be no discrimination against them and that there shall be applied to their present situation the time-honored American motto 'Equal opportunities to all—special privileges to none.' Speaking for myself, and I believe I voice the sentiment of the American railroads, I beg to state that under such conditions we will accept the challenge of any competitor and in the arena of commerce cross swords with any foe."

GOVERNMENT REGULATION OF THE IRREGULAR ROUTE MOTOR CARRIER. By Joseph H. Hays. An address before the National Association of Railroad and Public Utilities Commissioners; November 14, 1930.

THE RAILROADS. An address by L. H. Powell before the National Association of Railroad and Public Utilities Commissioners; November 14, 1930.

The Major Rôles Played by the Lawyer in the Development of State Regulation

REGULATION of public utilities is a child of doubtful governmental parentage. Created by the legislative branch of the government, it was placed in custody of the executive branch. Since then its growth has been in-

fluenced, checked, encouraged, disciplined, and generally developed by the judiciary.

The courts today are both the mentor and guardian of regulation. Commissions are almost fifty per cent manned by lawyers and even those few commissions that do not possess lawyers are advised and largely influenced by their counsels or state attorney generals. It is apparent to even the most casual observer that the lawyer still plays a major rôle in utility regulation.

But what do the lawyers themselves as a group think about regulation? How should they play these parts? And what does the interested layman think of their performance?

These interesting questions were all raised and answered by the Hon. Charles H. English, of Erie, Pennsylvania, Chairman of the State Board of Law Examiners in that state, in an address to the forty-second annual convention of the National Association of Railroad and Utilities Commissioners, held at Charleston, South Carolina, November 12 to 15, 1930.

Mr. English sketched briefly the fundamental decisions which form the legal background of regulation touching upon such landmark decisions as Munn *v.* Illinois, the Minnesota Rate Cases, and Smyth *v.* Ames. Through these decisions there has been built up constitutional law as it applies to utility regulation. Furthermore these decisions, he pointed out, demonstrate the lengths to which the judiciary, acting through the Supreme Court, will go to adopt the Constitution to the protection of the lives, rights, and property of citizens in all branches of law. Because of this extremely flexible treatment of the Constitution by the Supreme Court, it has been necessary to adopt only nineteen amendments to the Constitution out of more than three thousand that have been proposed at some time or other since the meeting of the first Congress.

THE constitutional protection of property rights through utility decisions has not been easily established. Mr. English pointed out the vigorous debate that occurred in the Senate on the confirmation of the nomination of the present Chief Justice because of his apparent attitude toward the importance to be given reproduction cost in valuation proceedings.

The speaker was of the opinion, however, that these persistent attacks upon the regulatory doctrines established by the Supreme Court will die out just as more bitter assaults upon the policies of the highest court as enunciated in Marberry *v.* Madison, during the early years of our country, gradually subsided leaving the decisions of the court supreme and unchallenged.

That the lawyers themselves have to prepare for regulatory practice was the next point established by Mr. English. First, he said, they should obtain a good background in constitutional law—stressing that part of it which has to do with utility regulation.

Next, the lawyer should be more liberal in his views as to procedure. On this point Mr. English stated:

> "He must liberalize his attitude toward the conduct of investigation and must revise entirely his notions as to the reception of evidence. It becomes necessary for him to help practical-minded men to take short cuts in getting at facts. It would be impossible, for instance, to get an inventory of a modern utility property in evidence in the good old fashioned law suit without putting on the witness stand the individuals who actually wanted the property."

Mr. English, at the same time, observed that those engaged in regulation, who are not lawyers should not resent or oppose the intrusion of the lawyer and the law into a field which some are disposed to call a matter of pure economics. He stated:

> "It must be recognized that men trained in the law are needed in practice before administrative tribunals. No disputed matter can be disposed of with the same clearness and expedition as when such proceedings are assisted by the mind accustomed to the definition of issues and the production of evidence. The day has passed when proceedings can be conducted before a public service commission with no more formality than proceedings before a justice of peace."

THE IMPENDING ISSUE

UNFORTUNATELY, some members of the bar are inclined to take regulatory practice too lightly and to adopt a patronizing and, in some cases, even a contemptuous attitude towards a tribunal composed of laymen. This recently happened in Nebraska when Commissioner Charles A. Randall was compelled to bar an attorney from certain proceedings because he had attacked the personal integrity of the commissioners.

Mr. English condemned such smugness in lawyers. He stated:

"It is important that the lawyer before a commission consider himself as interested primarily in the administration of justice. When he represents a utility company he can serve his client best by helping to develop in his client a consciousness of its public obligation. The same frankness and confidence should exist between the commission and the lawyer as between the judge and the lawyer. Unfortunately, many lawyers, who are scrupulously ethical in the ordinary practice of the law, feel that it is legitimate to play politics with matters under adjudication before public service commissions. It would seem to be just as reprehensible to prosecute unmeritorious proceedings before a commission as before

a court of law. Yet some members of the bar do not hesitate to file complaints and to take up the time of the regulatory bodies without the slightest expectation of success."

VIEWS somewhat akin to Mr. English's were expressed later by Mr. William Chamberlain, president of the United Light and Power Company, of Chicago. Mr. Chamberlain's talk was also concerned with the law and regulation, but he confined himself to the consideration of Federal law as dispensed by the Federal courts.

If it were remarkable for nothing else, this address contained a clear cut explanation of the powers of the Federal judiciary with relation to the orders of state public service commissions and to the regulatory laws of state legislatures. He said:

"What are the functions of the Federal courts in respect to state rate regulation? We may say with perfect accuracy that they have none. They can neither make rates nor alter nor modify rates made by lawful regulatory authority. Neither can they establish rate bases. To the superficial observer these statements may sound surprising. They are nevertheless precisely accurate."

Mr. Chamberlain then traced the constitutional theory upon which Federal courts restrain confiscatory state regulation and stated:

"So the Federal courts and the state courts as well have from the earliest date declined to enforce laws or orders which are clearly violative of the terms of the Constitution. Not only do the courts decline to enforce laws of this character but, upon complaint of citizens, they will extend affirmative relief against the legislative or administrative enforcement of an unconstitutional law or order. This principle became recognized in the earliest days of our government. It has been applied to laws of every kind, and long preceded the practice of regulation of public utilities by statewide commissions."

WE FREQUENTLY lose sight of the traditional background for many of the Supreme Court rulings on utility regulation. These rulings are mere formal applications and adaptations of long established precedents to modern circumstances and new subject matter.

Mr. Chamberlain recalled one specific instance of a western Congressman who protested violently, after a Federal court in New Jersey had restrained an order of the state regulatory body, that no such outrageous invasion of the sovereign rights of the state had ever been attempted in the history of our country; he trembled to think of what would happen if the Federal courts in *his* state should undertake to entertain such jurisdiction.

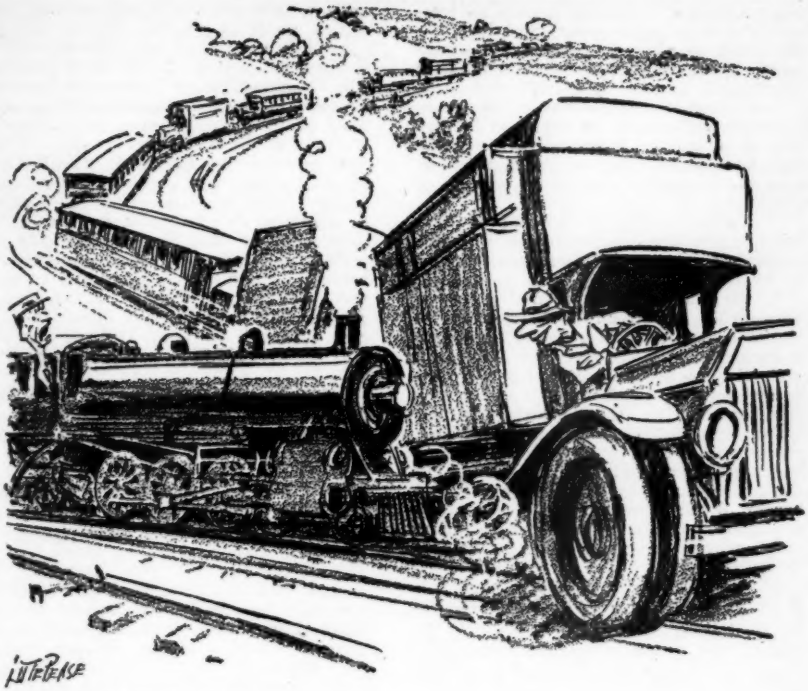
It fell to the lot of Mr. Chamberlain to point out to this irate Solon that in his own state just two years previous the Federal courts had in fact entertained just such jurisdiction in two suits and the resulting decisions had not caused a ripple of popular interest or indignation. The legislator was obliged to confess that his alarm was groundless and that his fears were based upon an entire misapprehension of fact.

In conclusion Mr. Chamberlain not only praised the Supreme Court for its firm position on the necessity for reproduction cost as an element in ascertaining rate values, but he also defended reproduction cost itself. He predicted that we shall emerge from an era of high prices to an era of low prices. This, he claimed, will be accomplished with less difficulty than was experienced in attaining the higher levels from the lower.

There will doubtless be some litigation but in the main, state regulation will move forward in all but the smallest fraction of cases successfully and efficiently. And as to the fraction, it should be realized that the exceedingly infrequent invocation of the Federal courts plays the simple part, which we must all respect, of deciding for us our constitutional rights and limitations.

THE LAWYERS PART IN REGULATION. By Charles H. English. An address before the Charleston Convention of the National Association of Railroad and Utilities Commissioners; November 14, 1930.

FEDERAL OR STATE REGULATION? By William Chamberlain. An address before the Charleston Convention of the National Association of Railroad and Utilities Commissioners; November 13, 1930



Newark (N. J.) Evening News.

UNREGULATED COMPETITION

A Municipal Commission's Unique Success with a Municipal Plant in Florida

So far as the matter of rates is concerned, the operation of the Orlando, Florida Municipal Water & Electric Light Plant has been a unique success, according to an analysis of its operation in the *Florida Municipal Record.*

Prior to 1922 the water and electric light properties in Orlando and vicinity were owned and operated by the Orlando Water & Light Company. In 1922 these properties were taken over by the city. In commenting upon the results of the operation of the municipal undertaking the general manager said:

"Analysis of the operating plants can be summarized in a short paragraph. Its growth has been abnormal. The only funds the taxpayers have invested is the original $1,500,000 in bonds. The worth of the plant today based upon earning capacity is around five to six millions, and this great increase has been taken care of without the necessity of any additional bond issues, and the original bond issues have never cost the taxpayers one cent for interest or sinking fund. An adequate depreciation reserve has been set up, good dependable service has been rendered at all times—all of this with rates as low as any city in the state of Florida."

Certain fixed policies are said, in a large measure, to be responsible for a great part of the success. Among those mentioned are the following:

"The Orlando Utilities Commission feels that to serve the community with good

water and electric service is both an obligation and an opportunity, and it maintains that no consumer is properly served unless there exists that fine and intimate relationship inspired by mutual confidence.

"An unwritten agreement with every consumer and citizen provides that he may call upon utilities executives at any time for information, advice, suggestion, or counsel in matters relating to service or operation.

"To give the greatest amount of electricity and water consistent with good, dependable service at the lowest possible cost to the consumer.

"Every public utility, whether privately, municipally, or commission operated is constantly subjected to requests for extensions and expansions, and they assume an obligation to render adequate service and to make some contributions to community development, but the Orlando Utilities Commission has distinguished wisely between those expansions and extensions which are directly related to the community development and those which are of no benefit to the community as a whole and which will not for a long period of time yield sufficient revenues to cover the cost of the service."

THE *Florida Municipal Record* measures investments and revenues of the municipal plant according to certain accepted standards as follows:

"There are certain accepted standards which have been established by experience which are used to measure investments and revenues. There will be found in every business certain checks or yardsticks which are accepted and used by professional men in measuring the success or failure of any business. Let us take that accepted standard of the ratio of investment to gross revenues, which translated means the number of dollars invested to produce $1 of gross revenues. Analyzing all of the electric plants in the United States as shown by the United States Census Bureau, and we find for the year 1929 the average investment of over eleven billion dollars produces a gross electric revenue of a little more than two billion, or $5.30 invested to produce $1 of gross revenue. The Orlando Utilities Commission has only invested in electric property $2.89 to produce $1 of gross revenue, which clearly shows that the investment in spite of the abnormal demands during the so-called expansion period, was well within the limits of good sound business judgment. It might be suggested that the revenues were out of proportion to what they should have received. Using the statistics from the same sources, we find the average yearly revenue per customer was $86.75 for the United States, while the amount received from the customers of the Orlando Utilities Commission was only $75.59 per customer per year."

It is also stated that the Orlando undertaking is not open to the charge of wastefulness and inefficiency. Says the *Record*:

"It is frequently stated that the commission form of management is wasteful and inefficient. Now let us check contention using the records of United States Census Bureau for the year 1929. We find the general average relation of the operating expenses (which do not include interest, taxes, depreciation, or sinking fund) to the gross revenues is 45 per cent, and testing the operations of the Orlando Utilities Commission on the same basis is only 36 per cent, which means the average of the electric properties in the United States used 45 per cent of their revenues for operating expenses where the Orlando Utilities Commission used only 36 per cent, showing an efficient saving operation which is less than 80 per cent of the average utilities expense of the United States."

The members of the Orlando Utilities Commission, which manages the property, give their time and services to the city without compensation.

ORLANDO UTILITIES. *Florida Municipal Record*. September, 1930.

Other Articles Worth Reading

AMENDMENTS TO THE NEW YORK PUBLIC SERVICE COMMISSION LAW IN 1930. By William L. Ransom. *New York State Bar Association Bulletin;* pages 510–514. November, 1930.

HOW GREAT BRITAIN REGULATES THE MOTOR BUS. By Ivan Bowen. *Bus Transportation;* pages 602–603. November, 1930.

ORLANDO UTILITIES GREAT SUCCESS. *Florida Municipal Record;* pages 12–17 and 25. September, 1930.

PARKING REGULATION. *AERA;* pages 657–659. November, 1930.

THE YOUNG GIANT: NATURAL GAS FUEL. *Scientific American.* November, 1930.

As Seen from the Side-lines

THE Congress of the United States is a bull, the head or tail of which the President of the United States likes to let go of the very instant he can do it without personal embarrassment.

* *

WOODROW WILSON, with his austere aloofness, his exuding dignity, and his penchant for stating altruistic ideals, was usually able to cold-shoulder the Congress or arouse public sentiment against it and he got along quite well when he had a tractable Democratic majority to respond to his demands.

* *

THEODORE ROOSEVELT either ananiased or blustered Congress and by physical force was exceedingly able to mold its enactments to his views.

* *

CALVIN COOLIDGE regarded the Congress very often as a bad boy on a spree. It took a malicious delight in upsetting his pet programs and plans, but he took the constitutional view that the Congress was the master of its own destinies and the political view that it would have to report to the people its strengths and shortcomings and eventually rest upon the public judgment of them. So, as time wore on, he out-patienced Congress, refused to nag or scold it, and in his final days as President he was able to get quite what he wanted.

* *

HE was serenely content to let Congress adjourn and he would then take himself off to Swampscott, the Adirondacks, or the Black Hills, where he held the spotlight without the rivalry of 435 Congressmen and 96 Senators, all anxious to crack Page One of the newspapers with the chroniclings of their greatness, and from those places of vantage he could mold the sentiment of the country to his policies and programs without incessant competition.

BUT the history of the country shows beyond doubt that Congress has invariably been a thorn in the side of the President, and gentlemen like Messrs. Taft and Harding seemed unequipped to contest with it for supremacy.

* *

MR. HOOVER, early in his career, got a special session of Congress on his hands, with the result almost inevitable. By its contentiousness, it provoked the wrath of the people against the administration ins and it was more than any other fact responsible for the lacing the party leadership took at the polls recently.

* *

IT seemed to the sidewalk observer, whose curbstone judgment will find expression so long as democracy, or the semblance of it, lasts, that Mr. Hoover would have been much better off had he ignored Senator Borah's advice and taken himself off to Palo Alto or some other comfortable retreat and consumed the first six months preparing the public mind for his program when Congress was not in session.

* *

HOWEVER that may be, he's in and so is Congress again. And it would seem from the tenor of his message that he would like to get Congress out as quickly as may be humanly possible.

* *

THAT section of his message which details, or rather alludes, to pending legislation affecting the public utility interests of the country, seems to substantiate that observation.

* *

IT may be noted that he said that "The Congress has before it legislation partially completed in the last session in respect to Muscle Shoals, bus regulation . . ." and that "It is desirable that these measures should be completed."

THE urge for action does not seem to be there; neither does it contain the definite expression of his interest as to how they should be completed. He conspicuously omitted any statement of a controversial nature which could be seized upon by his inherent opponents and made to consume the hours of oratorical repartee, otherwise known in solemn language as "debate."

* *

HE refers to the fact that he formerly recommended effective regulation of interstate electrical power and says that such regulation should preserve the independence and responsibility of the states.

* *

HE recommends that an inquiry be made of the workings of the anti-trust laws and while he insists that he does not want the Sherman Act repealed he intimates that the law should be loosened in order that the wastefulness of competition may be eliminated.

* *

IT seems, all in all, that the President summarizes his attitude most perfectly in the statement that the short session of Congress does not permit of extensive legislative programs and that matters not involved in the relief of economic distress and unemployment might merely be shaped for action at some future time.

* *

IT is a nice polite way of saying to Congress: Clean up the appropriation matters and get out. And, in an aside, "I had you birds on my hands for one extra session and I want no more of *that*."

* *

IN justice to the Congress, it should be said that the patriotic gentlemen who framed the Constitution created it as an independent branch of government, that they equipped it with power to refuse to sustain the President and that, having come through a fight themselves, they were not averse to having a constant one in progress between the executive and legislative branches. If that be true, they certainly have been well paid for their intention.

THESE members of Congress have to make a record for themselves. Every two years, on one side of the House, and every six years, on the other, they must trek back to their constituents and explain the whys and wherefores of their activities at Washington. And, lest the constituents forget them, they are not averse to having their doings recounted and portrayed in the public prints in the days between elections.

* *

SOME people say the country has become great despite Congress, the President, and the interlocking form of government. But you can't escape the fact that the country has made marked progress while Congress has existed and Congress can lay its claim to the share of fame.

* *

ALL the pretentions of nonpartisanship will have been wiped out no doubt ere this is published. Congress, (that is, the Senate end of it), will be functioning on its own responsibility despite the President. It will be refusing to do some of the things he wants done; it will be insisting on doing some of the things he does not want done.

* *

THERE will be pressure for and against Muscle Shoals, for legislation to expedite the consolidation of the railroads and for the other matters of public utility concern referred to by the President in his message.

* *

IT is our guess, however, that if the bill regulating the use of busses in interstate commerce makes its way through both branches of Congress and the White House it will be the solitary act of legislation affecting the utilities.

* *

THE boys in Congress will have had their say; the *Congressional Record* will be no less voluminous than in preceding years, and everybody will be happy.

John T. Lambert

WHAT READERS ASK

Out of the mail bag of the editors have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do *you* want to ask?

QUESTION

What is meant by "thinning the equity" of the common stockholders in corporations?

ANSWER

This means increasing the proportion of bond or debt obligations to the amount of common stock. If there were no bonds, the common stockholders would own the property free from fixed indebtedness. When bonds are issued, stockholders are still the legal owners of the property, but they have only an equity in it just as the owner of a house and lot with a mortgage on it has only an equity in the property.

If an operating company were financed partially by bonds and partially by common stock, the stockholders would, of course, have only an equity in the property represented by the difference between its value and the amount of bonds issued. If this stock were purchased by a holding company which was financed partly by bonds and partly by stock the equity of the owners of the common stock of the holding company would be still further "thinned," as the saying goes.

QUESTION

A passenger purchases a railroad ticket and uses it. Afterwards he is informed by the railroad company that the price quoted and paid for the ticket was less than the legal rate filed with the proper Commission. Can the railroad company collect the amount of the underpayment?

ANSWER

It has been held by the Supreme Court of the United States in Louisville & N. R. Co. v. Maxwell (1915) 237 U. S. 94, 57 L. ed. 853, P.U.R.1915C, 300, 35 Sup. Ct. Rep. 494, that the amount of the underpayment can be collected by a railroad company notwithstanding the fact that the passenger was in no way at fault in the matter. The ground for this was that under the Interstate Commerce Act the rate of the railroad company duly filed is the only lawful charge and that deviation from it is not permitted upon any pretext. It was held that shippers and travelers are charged with notice of it and that they as well as the railroads must abide by it unless it is found by the Commission to be unreasonable. Ignorance of the rate is not an excuse for paying or charging either less or more than the rate filed. The court said that this rule is undeniably strict, and that it obviously might work hardship in some cases but that it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination.

It will readily be seen how difficult it would be to enforce the nondiscriminatory provisions of the law if deviations were allowed. Collusion would soon be charged between the railroads and the persons affected, and litigation would be encouraged. The strict rule, although working hardship in some cases, is probably regarded as the lesser of two evils.

QUESTION

What is the average consumption of electricity for domestic purposes in America?

ANSWER

According to a statement by Martin J. Insull, president of the Middle West Utilities Company, the average domestic consumer's use annually was 457 kilowatt hours in 1927, 477 kilowatt hours in 1928, and 512 kilowatt hours in 1929. Morris Llewellyn Cooke places the annual use at a little more than 300 kilowatt hours. The annual use in Michi-

gan jumped from 471 kilowatt hours in 1926 to 575 kilowatt hours in 1929. Mr. Insull says that the greater proportion of electricity consumed in the home is used for lighting, but that lighting is far from adequate in the American home; that the only appliance in general use is the electric iron which is 94 per cent saturation; that less than half of the customers are using electric vacuum cleaners and only one third electric washing machines; that hardly a beginning has been made in the major load builders; that refrigerators are in use in only 10 per cent of the homes and ranges in only 5 per cent and that electric water heaters have been placed in less than 2 per cent of the homes.

These statements are interesting because of the fact that the more extended use is made of electric current the cheaper it can be sold per unit. It is very cheap now, but undoubtedly can be made much cheaper if domestic consumption is increased.

QUESTION

What is meant by the term "what the traffic will bear?"

ANSWER

It may mean all that the seller can get from the buyer, or it may mean the least that the seller can afford to sell the article for. Those who say that utility rates are based on "what the traffic will bear" mean that the utilities are getting the very highest prices possible for their service; that they are basing their rates on the value of the service to the consumer rather than the cost of producing the service.

Like many other terms this expression—"what the traffic will bear"—has been given a bad meaning. There is nothing wrong about it as applied to general commercial transactions. Sound trades are beneficial to both parties, the seller and the buyer alike. If the benefit goes only to one party of the transaction, the business could not continue. In ordinary commercial transactions rates are based on what the traffic will bear, all factors, competition among them, being taken into consideration.

Under our modern theory of regulation of public utilities, rates for public service, as a whole, are based upon the cost of the service and not upon the principle of what the traffic will bear.

QUESTION

Various statements have been made as to the percentage of electrical current crossing state lines. Is this all interstate commerce; and if so, has the Federal Government alone the power to regulate it?

ANSWER

All electric current that crosses state lines on the way from the producer to the consumer is undoubtedly interstate commerce; but only a part of this interstate commerce is beyond the power of the states to regulate in the absence of Federal regulation.

The rules seem to be reasonably well settled that the states have no power to regulate the rates of an interstate company selling its product or service to a distributing company whether Congress has acted in the matter or not; that the states have exclusive jurisdiction to regulate the rates of a distributing company within the state although it obtains its current or product through interstate commerce because the distribution is intrastate commerce over which Congress could not, if it wished, exercise control; that where the product or sale is transmitted from the producing company directly to the consumers across state lines the transaction does not lose its character of interstate commerce; but that the rates charged to consumers in such cases are of local rather than national importance; that if the Federal Government has failed to act in that field the states will still retain their power to regulate; and finally that so far as electricity is delivered by the producing company to consumers in its own state the state commission would have jurisdiction on the ground that this is not interstate commerce. (Note: P.U.R.1926A, Appendix.)

It would seem, therefore, that the only part of interstate commerce in electricity that the states have not now the power to regulate if they choose to exercise it is that part of the current sold to a distributing company for distribution to customers in another state. The rates of the distributing company to the local consumers are subject to regulation by the state commission. The commission may also consider the reasonableness of the charge to the distributing company although it has no power to fix that charge.

The Duty of a Utility Company to Serve Its Competitors

¶ JUST *how far a corporation is required or permitted to go in supplying utility service that benefits its rivals, is the subject of an article—based upon a study of court and commission decisions—that will appear in the coming issue of* PUBLIC UTILITIES FORTNIGHTLY.

The March of Events

What Happened at the Charleston Convention of the State Commissioners

UNDER the balmy skies of the Old South, the National Association of Railroad and Utilities Commissioners opened its forty-second annual convention in the Francis Marion Hotel at Charleston, S. C. on November 11th. As its name implies, this association is made up of the members of the regulatory bodies of all the states, territories, and the District of Columbia; its deliberations, therefore, are of vital interest to the public utilities of every type in every state, as well as to that portion of the public at large which is interested in utility affairs.

The morning session on the first day was made noteworthy by two features. One was the annual address by the Honorable Charles Webster, the retiring president of the association, and the chairman of the convention; the other was the report of the committee on railroad grade crossings by Chairman Frank McManamy of the Interstate Commerce Commission.

President Webster's address was a clear analysis of what the convention as a body was thinking about. It was almost an advance synopsis of everything that later transpired. He deplored the trend toward indiscriminate railroad consolidation by the Federal Government and he stated that "nobody except some of the bond houses would be benefited." He deplored the jurisdictional ambiguity of the Interstate Commerce Act as affecting electric railways; the adverse effect that competition by motor carriers and pipe lines was having upon our railroads; the failure of Congress to pass satisfactory legislation for the regulation of interstate busses; and the menace of both Couzens bills —the Communications Act and the Interstate Power Act. He completed his observations by deploring the manner in which Congress, through the Howell Bill, proposes to rewrite the celebrated "Section 15a" of the Interstate Commerce Act.

Reduced to a single element, President Webster's address was an indictment of regulatory sins committed by the Federal Government—sins of omission as well as of commission. The dominance of this issue at the convention is amply shown in another article appearing in this magazine.

Chairman McManamy's report is worth special note because it is startling. The grade crossing accident situation, it appears, is getting worse instead of better. This may be somewhat disappointing news to those states which have paid out millions of dollars for the elimination of grade crossings, but it should not stop or even slow up the battle to make our crossings safer. The committee reports that from accident records of the past, it may be expected with reasonable certainty that today and tomorrow and each day during the coming year an average of eight persons will lose their lives, and more than twenty persons will be seriously injured at highway grade crossings. The problem is nation wide and the remedy is the expenditure of sufficient money by the railroads and the public to eliminate grade crossings wherever it is practicable and to make unprotected crossings safer by protective devices.

The rest of the morning session of the first day was devoted largely to formal features which included an invocation by Rev. George A. Nickles, of Charleston; addresses of welcome by Mayor Thomas P. Stoney, of Charleston and Chairman R. H. McAdams of the South Carolina commission; a response by Commissioner J. J. Murphy of South Dakota, and greetings from the Interstate Commerce Commission by Chairman McManamy.

DURING a following session, Major Alexander Forward, managing director of the American Gas Association and a former Chairman of the commission of Virginia, gave an illuminating talk on the progress which the natural gas industry has made during the last two years, and which it is likely to make for sometime in the future. The particular point of interest in Major Forward's address was his conclusion to the effect that the state commissions now have adequate powers to regulate the natural gas business.

This last point was quite in accord with the report of the committee on service of public utility companies, as given by Chairman Thomas E. McKay of Utah, but it was quite at variance with the report as finally tendered after Commissioners Shukers and Montgomery of Kansas, and Frank Morgan of Alabama had objected. In its final form this report urged Federal legislation for the regulation of the price "at which gas pipe lines sells the gas to distributing companies." Following its custom, the convention took no action on these reports except to note their contents and put them on record.

The committee on service of public utilities also recommended Federal bus regulation and

the adoption of uniform legislation for airplanes.

Commissioner Frank Morgan not only raised certain questions concerning this report but also gave the report of the committee on public utility rates. This report contained several conclusions worth noting. Summarized they are as follows:

(1) The zoning system should be given more consideration in the designing of street railway rates:

(2) The need for Federal regulation of interstate natural gas pipe lines is much greater than that of the power and lighting industry.

(3) The time has come to consider the equity in the rate making between utility customers, or in other words, rate relationship.

The second flare up of the first evening came when Commissioner E. V. Williamson, of West Virginia, submitted the report of the committee on statistics and accounts. When this report was presented Chairman J. Wade Coffman, also of the West Virginia commission, moved that the association adopt a scheme for natural gas accounting which was carried in the Williamson report. Commissioner James S. Benn, of Pennsylvania, objected and argued so vigorously that the matter was put over until the next day when it was finally adopted.

The report of the special committee on air transportation regulation, which was also given by its chairman, Commissioner Fay Harding of North Dakota, showed the effect of much effort by Mr. Harding and his associates to collect data material to the regulation of this baby utility. Chairman Harding's report stressed the necessity for uniform regulation, complying as much as possible with the regulations of the United States Department of Commerce on aviation, and he cautioned the commissioners against the danger of throttling aviation in its infancy with too much regulation.

During the same session a report of the special committee on depreciation, signed by commissioners Frank W. Matson, of Minnesota, and Henry C. Atwill of Massachusetts, was almost exclusively devoted to valuation of telephone properties. The report suggested the appointment of regional committees composed of the statistical and engineering experts of each of the state commissions located in that region. The report suggested that these regions should be divided, as far as possible, according to the service areas of large companies or groups of companies. For example, the Northwestern Telephone Company serves the Dakotas, Iowa, Minnesota, and Nebraska. These states would compose, therefore, a logical regional area.

The report of the committee on intercorporate relations, signed by Chairman John F. Shaughnessy, of Nevada, indicated that the holding company situation is considerably better than it was a year previous, and the light of publicity itself was said to be a great corrective as well as the power which the Department of Justice and the attorney generals of the various states have exercised to give protection to the public.

This report did not seem to indicate any special demand for Federal regulation of the interstate holding company. It is significant to note that Chairman Harold E. West, of the Maryland Commission, also a member of this committee, in an article in PUBLIC UTILITIES FORTNIGHTLY for November 13th, which was given wide publicity at the convention and elsewhere, seems to be of a different opinion. Mr. West apparently believes that Federal regulation of interstate holding companies to some extent is warranted.

An address by United States Senator Ellison D. Smith, of South Carolina, completed the list of business for the evening session of the first day.

AN address by William Chamberlain, president of the United Light & Power Company of Chicago, on "Federal or State Regulation," undertook to prove the proposition that Federal courts on the whole are not thwarting regulation by state commissions.

The committee on coöperation between Federal and state commissions reported some progress, but an incidental observation made by the committee's chairman, Paul A. Walker, of Oklahoma, seems destined to bear much fruit. Mr. Walker said that he hoped the next convention would permit the question of coöperation to be taken up and discussed by the entire convention instead of making the report submitted a mere part of the record.

Subsequently Mr. Walker offered the following resolution, which was adopted and which will have an important bearing upon the future conventions:

"Be it resolved by the National Association of Railroad and Utilities Commissioners in convention assembled:

"That the rules in conflict therewith be suspended, and that this association direct that the next convention of this association devote four days to business sessions and the work of the association, and that at least the first two and one half days of the sessions of the convention, whether continuous or not, be confined exclusively, with the exception of the welcome addresses and responses thereto, to participation of members of this association; and that there be no papers or addresses of nonmembers until after the reports of committees of this association and the discussions thereon;

"And be it further resolved, that adequate provision be made by the executive committee for opportunity of informal dis-

cussion of matters suggesting themselves to members of this association, regardless of whether such matters are actually scheduled on the formal program, to the end that respective commissioners and their staffs may have the helpful mutual exchange of views on problems coming before them."

The report of the committee on valuation consisted chiefly of a review of litigation involving railroad valuations subsequent to the O'Fallon decision. The report was sponsored by Chairman Fred P. Woodruff, of the Iowa commission, and did much to influence the commissioners in the action which they took defining their position on the Howell Bill, which is elsewhere discussed in this issue. One interesting statement in the report was to the effect that a total of seventeen years and an expenditure of $37,108,262 by the Interstate Commerce Commission has been required to make a valuation of the steam carriers in this country. How long it will take and how much it will cost to make a valuation of other classes of carriers, even when the commission can devote the time to it, are more or less a matter of speculation.

THE committee on railroad service accommodations and claims, by Chairman Francis Williams, of Louisiana; the committee on railroad rates, by Chairman Claude L. Draper, of Wyoming; a committee on statistics and accounts of railroad companies, by Chairman L. R. Bitney of Minnesota, and the report of the special committee on Interstate Commerce Commission classification of accounts, by Chairman J. W. Greenleaf of Kansas, all reported progress.

Concluding the morning session of the second day, Hon. O. P. B. Jacobson, chairman of the Minnesota commission, addressed the convention on the millennial celebration of the Althing, the Parliament of Iceland, which he attended as one of the five representatives of the United States. The resolution congratulating Mr. Jacobson for the honors bestowed was carried during the afternoon session of the second day.

The Hon. J. W. McCardle, chairman of the Indiana commission, delivered a colorful address on "Government and Municipal Operation of Utilities and Other Properties." Commissioner McCardle scored several telling points against government ownership and operation and remarked in the course of his talk that what this country needed was less government in business and more business in government.

ON the third day there was an address by Joseph H. Hays, of Sioux City, Iowa, author of the Iowa motor truck legislation, which provides for mandatory issuance of certificates permitting the operation of truck carriers whenever an applicant shows a willingness to comply with certain regulations and without any regard to public convenience and necessity. This law was influenced largely by the suggestions of the Iowa Truck Owners' Association of which Mr. Hays is the general counsel.

Although it was not supposed to be a direct reply, a subsequent address by Mr. L. R. Powell, Jr., president of the Seaboard Air Line Railway Company, struck many of the commissioners as being the railroad's answer to the contention made by Mr. Hays. Mr. Powell substantially argued that since the motor truckers could never take the place of the railroads, motor trucking competition should not be allowed under conditions that would substantially impair the security of rail service.

Both of these two addresses were carefully prepared, well presented, and contained valuable data.

In giving the report of the special Committee on Motor Vehicle Legislation, General Solicitor, John E. Benton, Chairman, stated that he believed the Parker-Couzens Bill will pass the Senate early in the short session of Congress and will then go to a conference committee for consideration of certain Senate amendments, and that final enactment at the short session may accordingly be expected.

The special committee on uniform regulatory laws, of which Philip H. Porter, of the Wisconsin commission, was chairman, submitted a uniform motor carrier act which contained most of the usual provisions of the more progressive state motor acts throughout the country. Commissioner A. R. McDonald, of Wisconsin, reporting for the committee on legislation, commented upon the progress made by that committee with the aid of the general solicitor, John E. Benton, in opposing objectionable Federal legislation notably the Couzens Communications Bill.

The address by Honorable Charles H. English, of Erie, Pennsylvania, chairman of the Pennsylvania State Board of Law Examiners, was entitled "The Lawyer's Part in Regulatory Administration;" it is elsewhere discussed in this issue.

Chairman Amos A. Betts, of the Arizona commission, in giving the report of the committee on motor vehicle transportation, stressed the need for Federal regulation of the interstate motor carrier, and said the failure of Congress to act had precipitated a situation of undesirable competition between railroads and motor carriers. Mr. Betts suggested that the railroads themselves might relieve the situation by the acquisition of more important existing motor truck lines.

CHAIRMAN Adolph Kanneberg, of the Wisconsin commission, gave a particularly comprehensive report for the committee on generation and distribution of electric pow-

er, which deserved much more consideration than the time allowed. Chairman Kanneberg's report portrayed much painstaking research by his committee, and he submitted figures that certainly seemed to go a long way towards dispelling the allegations so frequently made by government ownership advocates that domestic electric rates are exorbitant. According to Mr. Kanneberg's figures the average domestic user of less than four hundred kilowatt hours is just about paying the cost of the service rendered to him, and if his consumption is less than three hundred and fifty hours or over twelve hundred hours he is paying a little more than cost. Assuming a return of 8 per cent to be fair, the report showed that commercial and industrial consumers with annual consumption of less than 12,000 kilowatt hours are paying somewhat more than their fair share of operating costs.

Reporting for the committee on publication of commissions' decisions, Secretary James B. Walker of the National Association, showed that the Public Utilities Reports system had approached a financial position which was substantially self-sustaining for the first time in its history, due to the marked progress made by its sister publication, PUBLIC UTILITIES FORTNIGHTLY. The open forum editorial policy of the magazine was strongly endorsed.

REPORTING for the special committee on consolidation of railroads, Chairman J. W. McCardle, of the Indiana commission, announced the opposition of that committee to any consolidation effected by compulsion and not coming as a natural result of conditions and circumstances. Mr. McCardle said that even such consolidations as are the natural outgrowth of economic developments should be subjected to the control and approval of the regulatory bodies, which should use circumspection in permitting such consolidations rather than to lend them indiscriminate encouragement. The report suggested that the consolidation of railroads should be subject to approval by the states in which the lines of the merged railroads operate. The committee's report was somewhat in the nature of an attack on the approval of the Interstate Commerce Commission of the merging of the Great Northern and the Northern Pacific, which is at present opposed by Minnesota, Illinois, and other states.

SUMMING up the convention as a whole, one is likely to receive the impression that the most important acts accomplished, besides an attack on Federal interference and the Howell Bill, was the passing of the Walker resolution which will assign the first two and one-half days of future conventions to the disposition of the commission's own work. This means that hereafter addresses by guests, (except, of course formal addresses of welcome), will not be permitted until the commissions have done their own work and have had their own say.

It was noticeable at Charleston that there were no forensic combats of the sort which used to make the meetings an intellectual classic in the days of Gibson and Gettle. Only two minor disagreements occurred; the first when the Kansas delegation objected to the report on the need for natural gas legislation, and the second when the report on uniform accounting for natural gas companies was presented. Aside from these conconflicts of opinions, the meeting was harmonious.

Yet there was ample opportunity for debate. Commissioner Kanneberg's findings about the charges of electric rates certainly could have created more attention, and if the convention as a body did not care to go on record as endorsing either of the Couzens Bills or the Parker-Couzens Bill in their present form, a free-for-all discussion might have done much to clarify the position of the individual members on just what changes in these bills would make them more acceptable.

It is probable that the commissioners would have obtained more real benefit from the convention if more time were devoted during the sessions to the accomplishment of the real purpose of the gathering—the exchange of regulatory ideas on current problems between commissioners from the several states. With the adoption of the Walker resolution it is to be expected that the Richmond convention in 1931 will bring forth bigger and better fights on the floor.

The entertainment program was extensive, and included excursions to Folly Beach, Fort Sumter, and Fort Moultrie, the Citadel, (known as the "West Point of the South"), and Magnolia Gardens; an oyster roast at Sullivan's Island and dances every evening; it concluded with a banquet on November 14th and a bus trip to Columbia on the morning of November 15th and closing ceremonies in the offices of the South Carolina commission in the State Office building.

Rail and Road Vehicle to Call for Passengers

A NEW type of vehicle, which will call for commuters at their front doors, climb on the tracks at the railway station for the trip to the city, and then climb off again when the city is reached and carry its passengers through the streets for delivery at their offices is being tried in England by the London, Midland and Scottish Railway Company. The secret of this unique plan of operation is the equipment of the vehicle with two sets of wheels. One set is provided with pneumatic tires for ordinary road travel like

a bus, while the other is equipped with steel tires and flanges in order to permit travel on rails.

Power is provided by a gasoline engine, and drive and control are similar to those of ordinary busses. Special machinery is provided by which the driver can raise or lower either set of wheels so that one set is out of the way while the other is in use. Air brakes work on either set of wheels so that the vehicle may operate either as a one-coach railway train, with all usual conveniences and safety appliances, or as a road bus. This is an answer to the motor bus competition, which has dealt severe blows to British railways.

California

Modesto Rate Cut Called Preferential

A GENERAL movement for reduction of electric rates throughout the agricultural sections of the state will be started soon, as the result of action taken by the Irrigation District Association of California at Stockton, says the San Francisco *Call-Bulletin*. The directors scored the Pacific Gas and Electric Company for reducing rates in Modesto where it competes with the Modesto Irrigation District.

The cities of Oakland and San Francisco have also raised objections. They complain that if the company can reduce rates in the Modesto District it should also reduce rates elsewhere.

The rate reduction has also been attacked by the Modesto Irrigation District, which has asked the commission to revoke the company's operating certificate in the region served by the district. It is protested that the low rate schedules are discriminatory because they represent lower charges for the same classes of electrical energy than are charged elsewhere.

District of Columbia

Electric Rates Attacked

PEOPLES' Counsel Richmond B. Keech has joined William McKay Clayton in attacking the decree of equity court under which the Potomac Electric Power Company rates are fixed and the manner in which the decree is currently interpreted, and has filed a demand with the commission to make greater reductions in the electric bills next year than are now planned. The Washington *Star* says:

"Mr. Keech's point is that following every reduction in rates there is an increase in electrical reduction, and that this increase should be taken into consideration when establishing new rates under the consent decree. This has never been done, nor is it contemplated by the commission at this time, according to its public statement recently issued. If this cannot be done under terms of the decree, then the decree is 'totally unconscionable and should be abrogated,' Mr. Keech concludes."

Mr. Keech, according to this paper, has also declared that the decree was never meant to be permanent. Mr. Clayton asked the commission to seek a reformation of the decree so that three-quarters instead of one-half of all earnings of the Potomac Electric Power Company above 7½ per cent on its valuation be applied to rate reductions.

Idaho

Revision of Utility Law Urged

THE Idaho commission in its biennial report to the governor and legislature has recommended that the issuance of permits to operate freight motor vehicles and issuance of commercial licenses for operation of motor vehicles should be handled by the same department, says the Boise *Capital News*. Under the present system the department of law enforcement issues commercial licenses and the public utilities commission issues freight operators' permits. The *Capital News* continues:

"The commission recommends that freight license operators should pay the same to the state for use of public highways to the extent of such use as do the auto transportation companies and that all freight operators, either under permit or commercial license,

should pay, in addition to the tax for such permits or licenses, a fee based on a rate of ton-mile of operation.

"The commission also recommends consideration of § 2447 of the public utilities law, making it a felony to disclose information given the commission by public utilities, except as brought out in hearings or proceedings. Violation of this law on conviction would carry a maximum fine of $5000 or imprisonment in the state penitentiary for not more than five years or both."

Indiana

Hearings Held in Telephone Rate Dispute

HEARINGS in the Southern Indiana Telephone & Telegraph Company's suit for a permanent injunction to prevent the commission from interfering with the collection of higher rates in thirty southern Indiana towns got under way in Federal court during the latter part of November and continued on into December. The company asserts that it has failed to earn a 7 per cent return on a valuation of $1,871,000, and for that reason the commission's orders denying rate increases amount to an unconstitutional confiscation of property of the company.

George M. Huffsmith, deputy attorney-general, appearing for the commission takes the position that the company is earning a return that is fair on the valuation of its property. He said, according to the Indianapolis *News*, that the commission would contend against any determination of earnings for separated "exchange areas" served by the company, since it could be shown that the company had made injudicious investments in nonpaying telephone exchanges, and had been charging the deficits of their operation to more populated exchanges. He said the commission would point out extravagances in costs of operation.

Maine

Management Fee and Tax Reduction before Federal Court

THE United States district court will pass upon rulings by the Maine commission in connection with the order reducing rates of the Kittery Electric Light Company. The Kittery company and the New Hampshire Gas & Electric Company, the former being a lessee of the latter, have secured a temporary injunction restraining the operation of the order made by the public utilities commission.

The contention is made by the companies that the commission has excluded as an item of expenses Federal income taxes upon the net income as established by the commission's own findings, the commission saying, "Federal income tax is a deduction from income and cannot properly be allowed as a part of operating expense." The further contention is made that the commission has excluded as an expense an actual payment to the J. C. White Management Corporation of approximately $1400 under a contract from which it is asserted the Kittery utility derived great benefit.

The Federal court proceedings are based upon the claim that the reduced rates are confiscatory. The companies ask for a permanent injunction against the new rate schedules after a hearing by the court. The new rates would have become effective on or before November 25, 1930, if the restraining order had not been issued.

Maryland

Commission Attempts to Equalize Gas Rates

A RESOLUTION adopted by the Montgomery County Civic Federation intimating that the Maryland commission would not approve a drastic reduction in gas rates brought forth from Chairman Harold E. West, of the commission, a letter denying the truth of such an intimation. Chairman West said that no such proposition had ever been submitted to the commission, and it was absurd to think that the commission would have re-

jected a proposition for the lowering of rates no matter how drastic the reduction proposed might have been.

On the contrary, he said, the commission has for years been endeavoring to secure lower rates for gas for the people of the counties bordering upon the District of Columbia. The commission sought to secure rates for these people equal to those prevailing in Washington.

He pointed out that new rate schedules of the Georgetown Gas Light Company and the Washington Gas Light Company, of Montgomery county, did make a substantial reduction in rates, this reduction aggregating about $40,000 a year; but as the return on the value of the property was lower than the amount allowed by the court, the commission saw no advantage to the customers in making the new rates the subject of a rate hearing. He said the commission, however, was negotiating to secure lower rates.

Massachusetts

Should Utility Employee Seek Rate Reduction?

A CONTROVERSY between the Boston Central Labor Union and the telephone company has developed over the discharge of a telephone operator who, as president of the Telephone Operators' Union, advocated phone rate reductions. The matter was taken before the State Board of Labor and Industries.

The operator, who is an officer of the Central Labor Union as well as the Telephone Operators' Union, was one of a number of labor leaders who signed a complaint against telephone rates, alleging that they were unreasonable and discriminatory. She was then asked by the company to resign because of her disloyality and hostility to the company. When she refused to do so she was discharged. She complains that she has been "discriminated against by the company" and is "a victim of circumstances." She indicated that she would seek court action if an adverse decision were rendered by the State Board of Labor and Industries.

Outside Control of Railroads Is Attacked

A BILL directing the Massachusetts commission to investigate to what extent, if any, the Pennsylvania Railroad Company and the Pennroad Corporation have acquired domination or control of, or a substantial interest in, the Boston & Maine Railroad Company and the New York, New Haven & Hartford Railroad Company has been introduced in the legislature. The representative filing the bill is quoted in the Boston *Post* as saying: "New England railroads should be controlled by the resident stockholders of New England."

Michigan

Rate Injunction Awaits Further Commission Probe

FINDINGS by the standing master in chancery filed last spring in the case of the Michigan Bell Telephone Company against the Michigan Public Utilities Commission that a 7 per cent return would be a fair rate and would avoid confiscation of the company's property were sustained by three Federal judges on November 25th. The judges, however, deferred an injunction for thirty days to enable the commission to continue its hearings on the rates and their effect under present conditions. They also provided in their decree that upon the taking of an appeal the injunction provided for in the decree be stayed pending the outcome of an appeal from the decree.

The court held that the company was entitled to earn approximately $10,000,000 annually, which is $3,000,000 more than the return allowed by the commission. The present investigation by the commission, however, has in view the determination of the question whether under present economic conditions expenditures have been reduced considerably and the company may be earning the $10,000,000.

Missouri

Gas Pipe Line Company Resists State Control

THE Missouri commission has ordered the Cities Service Gas Company to file a schedule of industrial gas rates for all gas distributed in Missouri by the company itself directly, or through any agents. Chairman Milton R. Stahl, of the commission, is reported as saying that the commission had been investigating the natural pipe line companies operating in Missouri for several months and that ample evidence had been discovered, in his opinion, to place the natural gas lines under control of the state commission as public utilities instead of considering them as interstate carriers.

The Cities Service Gas Company sells gas to the Kansas City Gas Company at the city limits for 40 cents per 1000 cubic feet, which, in turn, is distributed to the city by the Kansas City company. The Cities Service Gas Company, however, has contracts direct with large industrial concerns for rates as low as 18 cents a 1000 cubic feet, it is said, paying the Kansas City company a small carrying charge for use of its pipes.

The company, according to the St. Louis *Post-Dispatch*, has sent a letter to the commission declaring that its operations are in interstate commerce and denying that it is in any way subject to state regulation in Missouri. The company relies on a decision of the United States Supreme Court rendered in 1924 in which the court affirmed an injunction issued by the Federal district court in Kansas City restraining the commission from interfering with a gas rate increase in Kansas City by the distributing company which was based on an increase by the pipe line company, on the ground that the pipe line company was operating in interstate commerce and the commission could not interfere. The *Post-Dispatch* says in regard to this decision:

"In that case, however, the court held the only relation between the pipe line company and distributing company was seller and buyer, and that the pipe line company was selling gas in wholesale quantities not to consumers, but for resale by the distributing company. That decision pointed out that a different legal situation might exist where the pipe line company was a direct seller or a seller through an agent, to customers."

New York

Utilities Must File Contracts

THE public service commission has announced that it has directed every electrical corporation in the state to file with the commission a list of all special contracts under which they are furnishing electric service to any individual, class, or group of consumers. Contracts with other utilities and municipalities are not covered by the order.

Chairman Milo R. Maltbie is reported as saying that the purpose of the order is to ascertain to what extent there are special contracts in force throughout the state under which consumers are obtaining service under more favorable conditions or at lower rates than the public generally is paying.

Rail Fare Increase Delayed

THE commission has suspended for one hundred and twenty days, beginning January 1st, a proposed increase in commutation and round-trip fares filed by the New York Central Railroad Company to apply in the territory near New York city. An investigation of the proposed schedules has been started.

Ohio

Gate Rate for Gas

FURTHER evidence justifying its demands for increased rates to consumers in eight communities around Dayton, says the Dayton *Herald*, will be submitted by the legal department of the Dayton Power and Light Company to the commission. The commission recently refused to sanction the new schedules until proof of the wholesale purchase from the Ohio Fuel Gas Company and fairness of the gate rate price of 45 cents per 1000

cubic feet is established. The *Herald* adds:

"The Ohio Fuel Gas Company is owned and controlled by the Columbia Gas and Electric Company and both have contracts with the Columbia Engineering and Managing Corporation which also is owned by the Columbia Gas and Electric Company. It is this ownership, the commission points out, that make it mandatory that the Dayton company established the reasonableness of the gateway price before it can pass increases onto the others involved.

"The company filed its schedule of increases on June 17th last, and protests were filed by several of the towns involved. The new schedules were filed before the effective date of the Carpenter amendment, and the case not being heard within one hundred and twenty days the company filed bond to secure payment. . . .

"A statute in the Ohio general code provides that in cases where a public utility distributing natural gas applies for an increase in rates and has entered into a contract to pay a gateway price to transportation company under supervision of a managing company, the burden is upon the company asking for an increase in rates to show that the gateway price is just and reasonable to the distributing company and to the consumer.

"Fair value of the property of the distributing company and reasonableness of its other expenses were held to be of but little consequence if the gateway contract must be accepted as final. The commission pointed out that the parties in this case are so situated that the evidence which would throw a light upon the justness of the 45-cent gateway rate is within the control of the company and not easily available to the eight towns.

"The commission does not hold the contract between the producing and the distributing company void, sham, or fraudulent but takes the position that at this time the fairness of the gateway rate must be shown.

"The company argued that the commission has no control over the gas rate because the producing and wholesale company is not subject to regulation by the commission."

Texas

Dial Phones Make Extra Work in Hotels

THE day of machines which are expected to relieve manual labor, according to the Dallas *News*, has not brought relief to telephone operators in hotels but has increased their labor. Dallas hotels have asked the Southwestern Bell Telephone Company for a readjustment of their charge on calls by their guests to local numbers outside the hotel.

A charge of 10 cents is made for each call placed by a guest to a local number outside the building. Before the automatic telephone was developed the guest in his room could call the hotel telephone operator and she would connect him with the central operator. Now, since telephones in hotel rooms are simply "house phones" without dials, the guest must call the hotel operator and she must dial the outside number that the guests want.

The hotel receives 10 to 20 per cent on the dime collected for the call, which is no more than it got before the installation of automatic phones. Hotel owners think that a revision is called for in view of the extra service they now give.

Wisconsin

Reproduction Cost Issue before Supreme Court

THE cost of reproduction has never been held by the United States Supreme Court to be the sole basis for determining the value of utility property, according to the argument of Suel O. Arnold, appearing as counsel for the Wisconsin Railroad Commission on an appeal to the Supreme Court from a decision of the Federal court in Wisconsin holding that the commission's valuation of $75,000 placed upon the property of the Washburn Water Works Company for rate-making purposes was arbitrary and confiscatory. The commission had granted a small increase in rates and denied the request of the utility for a greater increase.

Counsel for the commission, in answer to questions, explained that the lower court refused to find that economic conditions are an element to be considered in ascertaining the value of public utility property. This, he said, was error. He also claimed error in the failure to find that the Washburn Water

Works plant is larger than required to serve the present population of the city.

R. M. Rieser, counsel for the utility, argued that the commission had ignored actual operating expenses and substituted its own estimate of what should be proper operating expenses. He further contended that the valuation fixed by the commission was inadequate because the valuation figures of the commission's engineer were submitted eleven months before the actual decision, during which time a material change in prices took place, the cost of reproducing the property increasing over $7000.

He charged that the commission had used a split-inventory valuation which was never offered in evidence, and also that the commission changed its method of computing depreciation. Mr. Rieser answered the contention in regard to over-building by stating that the plant is not larger than is necessary, and he quoted figures indicating that there had been no falling off in the revenues of the utility.

The Latest Utility Rulings

UNITED STATES SUPREME COURT. *Chicago, St. Paul, Minneapolis & Omaha Railway Co. v. Homberg.* (*No. 1.*) A Nebraska law authorizing the state commission to order a railroad to construct an overhead or underhead crossing wherever its right of way divides the land of an owner, and construed by the supreme court of that state to empower the commission to compel a railroad to establish an underground pass purely for the convenience of an individual owning lands on both sides of the track, was held to deprive the railroad company of its property for the benefit and private use of the landowner in contravention of the Fourteenth Amendment of the Federal Constitution.

UNITED STATES SUPREME COURT: *Cox v. Colorado.* (*No. 20.*) An appeal taken by an uncertificated motor carrier from contempt proceedings brought by the state of Colorado against him for alleged unlawful operations was dismissed for the lack of Federal jurisdiction. The appeal purported to "test the validity of the Colorado laws regulating motor vehicle carriers on the highways of the state."

UNITED STATES SUPREME COURT: *Smith v. Illinois Bell Telephone Co.* (*No. 90.*) Litigation commenced in 1923 when the telephone company sought to restrain an order of the Illinois commission cutting rates was remanded to the lower court with directions to make a special finding of facts as to the respective value of properties devoted to intrastate and interstate service. (*See Utilities and the Public, page 827.*)

UNITED STATES SUPREME COURT: *Latshaw v. Missouri ex rel. Kansas City Public Service Co.* The highest court refused to review a decision of the supreme court of the state holding that the Missouri commission had authority to entertain an application for increased street railway fares in Kansas City, Missouri, notwithstanding an outstanding franchise contract containing a so-called "service-at-cost" provision.

UNITED STATES DISTRICT COURT OF MINNESOTA: *Madden Bros. Inc. v. Commission et al.* (*43 Fed. (2d) 236.*) This was a bill to enjoin the Minnesota commission from requiring a motor transportation company to secure a certificate of convenience and necessity under state laws. Although the plaintiff had previously been informed that it would not be required to secure a certificate, the commission had later declared it to be a common carrier. The court dismissed the suit because of the lack of a Federal question, holding that the constitutional prohibition against the state denying due process is directed against the passage of laws, but not the misconstruction of laws.

ALABAMA COMMISSION: *Re Southern Cities Public Service Co.* All natural gas distributing companies operating in Alabama under control of the Southern Cities Public Service Company have been ordered to submit contracts relating to the price of their supply and other operating conditions to the commission. This commission order was taken in connection with a petition of the Southern Cities company for approval of its contract with the Southern Natural Gas Corporation which provides that the Southern Cities organization will cause all of its subsidiaries to agree to take their supply from the parent corporation at rates not less than rates paid by the Southern Cities company to the Southern Natural Gas Corporation. The Mobile Gas Company, the Alabama Utilities Service Company, and the Tri-Cities Gas Company are the distributing companies involved.

CALIFORNIA COMMISSION: *Re Los Angeles Gas & Elec. Corp.* Domestic and commercial gas rates were reduced 9 per cent by a 4 to 1 vote of the commission. (*See Utilities and the Public, page 827.*)

CALIFORNIA COMMISSION: *Re Sacramento Northern Railway.* (*Decision No. 23025, App. No. 16819.*) The railway company was given authority to relocate passenger station shelter shed, notwithstanding a right of way agreement the carrier had with a landowner. The commission ruled that the question of public convenience and necessity is paramount to any private contract of the carrier.

CALIFORNIA COMMISSION: *Re South Coast Gas Co.* (*Decision No. 23028, App. No. 16918.*) In authorizing the South Coast Gas Company to transfer certain properties to the San Diego Consolidated Gas & Electric Company, the commission ruled that a utility may not charge to its capital account the amount by which it has failed to earn a 7½ per cent return, and further that a purchasing company may not make such a charge upon a transfer of the properties.

DISTRICT OF COLUMBIA COURT OF APPEALS: *Smith v. Public Utilities Commission.* A lower court ruling to the effect that the District of Columbia commission does not have lawful authority to make and enforce a regulation requiring taxicab owners to furnish indemnity insurance or evidence of financial responsibility was sustained on appeal.

KANSAS COMMISSION: *Rules for Busses and Trucks.* Busses and trucks operating in Kansas hereafter must be equipped with colored flares so that the drivers can place warning signals at each end of a vehicle when it is stopped on the highway. Commercial vehicles under the new rule must be so lighted up that drivers of other cars on the highway can readily discern the length and width of the vehicle. A minimum of $10,000 liability insurance is required.

MONTANA COMMISSION: *Re Billings-Columbus-Absarokee Motor-Freight Service.* (*Dockets Nos. 600 and 182, Report and Order No. 1575.*) In awarding a certificate of convenience and necessity as between two rival motor carriers, the commission favored that carrier who had gone to the most trouble to prove the convenience and necessity of the proposed motor carrier service, which was protested by the operators of existing rail service.

MONTANA COMMISSION: *Re Polson-Damsite Motor Transportation.* (*Docket No. 1052, Report and Order No. 1576.*) The commission issued an unusual certificate for motor bus transportation because the route covered and lay, in part, over private property. This was done, however, upon the promise of the owner of such private property to execute an easement in favor of whichever carrier the commission would certify. As between seven applicants, all other things being equal, the commission favored one who was a resident and a taxpayer in the district to be served.

NEW HAMPSHIRE COMMISSION: *Re Bethlehem Electric Co. et al.* (*D–1331.*) A large electric utility was allowed to acquire all the properties of four smaller utilities which were well situated with relation to the purchasing company's system. The large utility was also allowed to take over the properties and provide service in territory previously served by two utilities all of whose stock it owned.

NEW JERSEY COMMISSION: *Hotel Riviera, Inc. v. Public Service Electric & Gas Co. et al.* Notwithstanding the fact that it involved a deposit of $2,000 to the gas and electric company and $1,500 to the telephone company, the commission refused to modify a rule requiring a hotel to establish credit by filing a deposit of twice the amount of its average bill for gas, electricity, and telephone service.

NEW JERSEY COMMISSION: *Re Sussex Telephone Co.* Application of a telephone company for increased rates in the vicinity of Lake Mohawk, New Jersey, which were calculated to produce a return of only 2.856 per cent, was granted notwithstanding objections to certain items in the claimed valuation, in view of the fact that the proposed rates could not produce an excessive return on any reasonable valuation of the properties involved. A toll charge of 10 cents between two exchanges to prevent excessive use by a few subscribers of the lines was also approved notwithstanding the fact that the additional revenue from toll charges would be very small.

OHIO COMMISSION: *Re New York Central Railroad Co.* (*No. 4387.*) Application of a railroad company for a certificate of convenience and necessity to operate motor vehicles for the transportation of property over a regular route between Cleveland, Toledo, and Danbury, Ohio, was dismissed. The commission gave three reasons: (1) no proper tariffs had been filed by the applicant as required by law; (2) the evidence did not show public necessity for additional service in view of available existing motor truck facilities; (3) the evidence did not show that existing motor carriers were not rendering adequate and convenient service.

OHIO COMMISSION: *Re Dayton Power & Light Co.* (*No. 341.*) Where a public utility distributing natural gas applies for an increase of rates and it appears that such a utility has entered into a contract to pay a pipe line company a gateway price of 45 cents per thousand cubic feet and it further

appears that said contract was made under the supervision of a managing company and that all the common stock of the distributing company, the pipe line company, and the managing company is owned or controlled by the same holding company, the burden is upon the company asking for an increase in rates to show that the gateway price is just and reasonable to the distributing company and to the consumer.

PENNSYLVANIA COMMISSION: *Lester v. Cheltenham & Abington Sewerage Co.* (*Complaint Docket No. 7978.*) Complaint by a patron of a sewerage utility against a threatened disconnection of service because of a certain drainage fixture on his premises was dismissed where it was shown that such fixture made it possible for cellar wash water and other objectionable matter, such as ashes and sweepings, to enter the sewerage main which the utility was required by a contractual agreement to use only for sanitary drainage purposes.

PENNSYLVANIA COMMISSION: *Erie v. Mutual Telephone Co.* (*Complaint Docket No. 8163.*) A complaint against the defendant company's rates in the city of Erie was dismissed when the commission found that revenues collected for the last three years have not exceeded the just and reasonable amount which the company was entitled to earn. Incidentally the commission made significant comment on the utility's treatment of employees' pensions.

PENNSYLVANIA COMMISSION: *Lehigh Valley Transit Co. v. Quaker City Motor Coach Lines, Inc.* (*Complaint Docket No. 8489.*) The commission refused to find from the evidence submitted in the complaint against the proposed operations of the Quaker Lines between Philadelphia, Easton, Bethlehem, and Allentown, Pennsylvania, that such operations were in fact intrastate and that the routing of portions of such operations through certain towns and villages of New Jersey was a mere subterfuge to evade state regulation. An interstate permit was accordingly granted.

WASHINGTON COMMISSION: *Re Anderson.* (*Order M. V. No. 2757, Hearing No. 554.*) Motor transportation between Port Madison and Winslow was authorized coincidental with permission for the discontinuance, during the winter months, of the passenger steamer service previously furnished by the Kitsap County Transportation Company on its so-called "Verona" route, in view of the financial loss accruing from the steamer service.

WASHINGTON COMMISSION: *Bingen v. Spokane, Portland & Seattle Railway Co.* (*No. 6362.*) Many years ago White Salmon was the dominant community in the area where the town of Bingen now stands. The latter has grown up so much, however, that it wants the name of the railroad station changed from White Salmon to Bingen, because of the financial loss to its business men resulting from the present misnomer. The town of White Salmon wants the name to stay White Salmon. The railroad company does not care which name is used but refuses to use a joint name, White Salmon-Bingen. The department on considering the present traffic contribution of the two communities ordered the name changed to Bingen.

WASHINGTON COMMISSION: *Re Port Ludlow-Kingston Transportation Co.* (*Order S. B. C. No. 98, S. B. C. Hearing No. 64.*) A certificate, giving authority for the operation of a ferry service between Seattle and Port Ludlow across Puget Sound, which had previously been issued but subsequently remanded by the state supreme court for a specific finding that the territory or district to be served was or was not served by an existing certificate holder, was reaffirmed by the commission. The commission repudiated the contention that all ferry service over Puget Sound should be divided into two districts—east and west, and held that the proposed service did not invade the "district" served by any existing certificate holder.

WISCONSIN COMMISSION: *Re Marshfield Water, Light & Power Co.* (*U-4011.*) Clarifying a previous order, the commission ruled that a rural consumer engaged in the single occupation of farming is entitled to have his entire consumption metered through a single meter regardless of the type of installation as long as he does not exceed a capacity of 10 kilovolt amperes. The utility was not required to rewire all rural installations which have at the present time more than one meter and it was permitted to accumulate the readings for billings on all such installations. The utility was ordered, however, to render service on all new farm customers through a single meter.

WYOMING COMMISSION: *Re Wyoming-Montana Pipe Line Co.* An application for authority to construct and operate a pipe line transporting gas in interstate commerce was denied when the applicant company failed to disclose its plan for financing the construction of the proposed pipe line. The commission defended its jurisdiction on the ground that the proposed operations include intrastate as well as interstate commerce.

NOTE.—The cases above referred to will be published in full or abstracted in *Public Utilities Reports.*

The Utilities and the Public

Supreme Court Makes New Ruling on Affiliated Company Charges

THE celebrated case of Smith *v.* Illinois Bell Telephone Company, in which the Federal courts are asked to pass upon the reasonableness of telephone rates fixed for the city of Chicago by the Illinois commission, still persists in occupying the dockets of the Federal court as a result of the decision of the United States Supreme Court rendered on December 1st, remanding the proceeding to the district court for further specific findings of fact.

Two important points in the decision deal with the payments by the Illinois company to the Western Electric Company for supplies and to the American Telephone & Telegraph Company under its license contract. The lower court had concluded that prices paid for supplies were not exorbitant. It found that the average profit of the Western Electric Company on its total business had not been excessive. Mr. Justice Hughes pointed out, however, that it cannot be assumed that net earnings on the entire business of the supply company represent the net earnings from the sales to the Bell licensees generally or from sales to the Illinois company. The court ruled that the question is as to the net earnings of the Western Electric Company realized in that department and the expense to which, if at all, such profit figures in the estimates upon which the charge of confiscation is predicated. Findings, it was held, should be made upon this point.

The license contract calls for payment for the use of instruments and for engineering, financial, and advisory services. The court said that it had no reason to doubt that valuable services were rendered by the American company, but that there should be specific findings with regard to the cost of these services to the American company and the reasonable amount which should be allocated in this respect to the operating expenses of the intrastate business of the Illinois company.

The court also made rulings on a number of significant points on regulatory appellate procedure generally that are well worth noting since they will surely be accepted as precedents in future utility appeals in the Federal courts.

In fact Chief Justice Hughes, who wrote the opinion of the court, might properly have entitled it "how to try a rate appeal," because it so definitely outlined the procedure to be followed by Federal courts in determining suits for injunctions against state commission rate orders. The opinion instructs the Federal court concerning what facts to ascertain and what facts to ignore. The opinion should be of great interest not only to all telephone companies, but to every utility which is operating in any way in connection with an affiliated interstate company.

The opinion dealt at some length with the subject of intercorporate relations of utilities, and their effect upon court procedure. It was decided that the Illinois Bell Company was a proper party to seek an injunction against an order of the Illinois commission, notwithstanding the fact that 99 per cent of its stock was owned by the American Telephone & Telegraph Company. The court ruled that ownership of stock by the latter and its power to control the subsidiary did not destroy the distinct corporate entity of the subsidiary or influence in any way its standing as the real plaintiff in the case.

The court also ruled that a state commission, in fixing the rates of a partic-

ular unit of the Bell system, must treat it as a segregated enterprise regardless of whatever advantages it may in fact have by virtue of being a component part of a large system. The court ruled that interstate and intrastate property, revenues, and expenses must be segregated.

In addition to this, the court said that it was the Federal district court's duty to find facts as to the value of the intrastate and interstate property, revenues, and expenses during the interval between the issuance of the commission's order and the time of the trial in Federal court. This duty was said to arise from the fact that a rate order, confiscatory when made, might cease to be confiscatory at a later date and, vice versa, an order, valid when made, may become confiscatory subsequently.

Dealing with the subject of depreciation the highest court ruled that the jurisdiction of the Interstate Commerce Commission over interstate telephone service does not preclude a state commission from determining a proper annual allowance for depreciation in connection with intrastate business while fixing intrastate rates.

In this respect the experience of a telephone company which is a unit of the Bell system as to the necessary allowance for depreciation in rate cases, together with a careful analysis of the result shown under comparable conditions by other companies which are part of the Bell system and enjoy the advantage of the continuous and expert supervision of a central technical organization, was said to constitute a sound basis for judgment as to the amount which in fairness both to the public and the company should be allowed as an annual charge for depreciation.

Regarding the jurisdiction of the state commission over interstate tolls, the court ruled that a state regulatory body had no authority to pass upon the fairness of the division of interstate tolls between the local subsidiary and another interstate telephone company, in view of the exclusive jurisdiction of the Interstate Commerce Commission over such matters.

Pennsylvania Commission Rules on Utility Pension Fund

THERE has been a pronounced trend in recent years towards the maintenance of the destitute aged by other than charitable agencies. This trend has grown up from the widespread recognition that the world owes every man a living to the end of his days, provided he has really tried to earn it. We have come to realize that a man who has worked hard, lived honestly, raised a family, and in the evening of his life finds himself without means and unable to compete with youth or machinery in keeping the pace of modern employments demands, is entitled to sustain his last days, not on the bitter crumbs of charity but on some systematic compensation.

There is a great difference of opinion, however, as to who should provide this compensation—as to what group should bear the expense. Old age pensions legislation now in effect in some states, including New York, places this burden upon the backs of taxpayers generally.

The Federal Retirement Act makes the employees of the Federal Government contribute themselves most of the amount necessary to carry on a pension system for superannuated employees.

How should utility companies provide for pensions? If the expense is paid out of corporate surplus, it is the shareholders who bear the burden. If the expense is included in annual operating expenses, it is the ratepayers who pay. If the company makes no provision at all, the taxpayers in the community served will have to pay for such aged employees as become public charges.

Decisions of the commissions seem to agree that a utility will be allowed to

decide for itself whether it wants to establish a pension system or not. They further agree that once established the expense may properly be charged to operating expenses.

But here another difficulty arises. Should a utility set up a reserve system for pensions or merely pay actual disbursements out of current operating expenses as they occur? If the former method is adopted, over how long a period should the original appropriation be amortized, if at all?

These questions recently arose in a complaint by the city of Erie before the Pennsylvania commission against the rates of the Mutual Telephone Company. After reviewing certain items in the company's operating expense account, the complainant objected to the amortization of an original appropriation made by the company in establishing a pension trust fund in February, 1929. The city contended that this original appropriation should have been charged against corporate surplus. The company wanted to amortize this amount over a period of five years. The commission stated:

> "The current expenses incurred by reason of pension fund provisions adopted by a utility as well as the method adopted in making such provision are matters of discretion for the officers of the company, but in recognizing the estimated past accrual cost, the utility itself should bear the costs which it has not formerly recognized and provided for. Consequently future operation cannot be made to bear the past accrual costs of a pension system which the company now finds imperative and for which no provision was made during the period covered by the accrual."

So it seems that, while the expense of a pension fund is chargeable to operating expenses, a utility can only charge against the ratepayers of a particular year the expense of pension liability accruing during that year. It will not be permitted to charge a present generation of ratepayers for pensions to be paid employees who have spent their useful years in serving a former generation of ratepayers at a time when the company had not provided for any pension system.

Gas Rate Reduction Ordered in Los Angeles

WHAT percentage of return can be said to be "reasonable" for public utilities? Time and again the higher courts, both state and Federal, have refused to fix any definite percentage which earnings must bear with relation to the value of property engaged in utility service in order to be called "reasonable." The reasons for this persistent refusal are too obvious and well known for repetition here. The value of money fluctuates just as the value of property fluctuates and what may be a fair dividend today may, by a mere explosion in the money markets, become too high or too low tomorrow.

Yet, it can be said that rates of return fixed by certain courts and commissions for utilities are constant over fairly long periods of time. It is generally thought, for instance, that the average rate of return required by Federal courts is approximately 8 per cent.

A composite rate computed from the percentages of return required by Federal courts in all utility cases reported in Public Utilities Reports from 1925 to December 1930, averages 7.6 per cent return.

Finally, we had a recent statement by Justice Sutherland, of the United States Supreme Court, in the Baltimore street car fare case, to the effect that commissions may have to allow such utilities to charge fares yielding from 7½ to 8 per cent return in order to escape Federal restraining orders. Of course this was not a court holding. It was mere opinion.

In the states it would appear that the average rate of return allowed by the commissions during the last five years has been somewhat lower. A recent decision of the California commission

may, if an injunction is sought, place the question of a return of less than 7½ per cent squarely up to the Federal courts and we shall see if these courts are prepared to follow Justice Sutherland's opinion.

The California decision was rendered by a 4 to 1 vote of the commission in a proceeding for the reduction of domestic and commercial gas rates of the Los Angeles Gas & Electric Company. As a result of this decision, such rates will be reduced 9 per cent, amounting in cash to approximately $1,330,000 a year. The company was given the option of putting into effect trial rates with a 7 per cent reduction in connection with the establishment of a "temperature reserve" to guard against violent fluctuations in earnings resulting from abrupt changes in the weather, particularly during the winter season when gas is used for heating purposes.

The commission found that the company had earned an average return rate of 7.65 per cent on gas, 9.44 per cent on electricity, and 8.26 per cent on both combined from 1916 to 1929. During the last three years, however, with due regard to temperature averages, and depreciation allowances, the company was said to have earned an average of 9.5 per cent return on its gas department alone, which the commission said was "higher than heretofore deemed reasonable in respect to this or to other comparable utilities."

The new rates are calculated to produce a rate of 6.8 per cent return on the historical value and 6.3 per cent upon the fair value fixed in accordance with the decisions of Federal courts. These rates were said to leave the company in an earning position "consonant with that allowed other comparable utilities" which has proven sufficiently liberal to attract large amounts of capital into the field of utility investment.

The majority opinion states:

> "If the company is to derive the advantage due to economic changes which raise the value of its property over its actual cost, it should at the same time in fairness expect to suffer any detriment due to economic changes which may lessen the cost or earning ability of money."

A vigorous dissenting opinion was rendered by Commissioner Decoto, who pointed out that the California commission has been one of the group of state bodies which have "clung ostensibly and theoretically to the historical rate base, but in reality has given effect to the different elements mentioned by the Federal courts . . . by allowing a rate of return between 8 and 8½ per cent on historical cost," thereby contenting the utilities.

Reduced Car Fares for Christmas Shoppers

THOSE who did their Christmas shopping in Milwaukee this season received a Christmas present from the street railway company by way of reduced rates. Commencing the last week of November, the Milwaukee Electric Railway & Light Company issued a weekly pass selling at 75 cents entitling the holder to take any number of rides desired except during the rush hours. This so-called "shoppers' pass" was not good between the hours of 5 and 9 a. m. or 4 and 7 p. m. on week days, but it was good at other hours.

The "shopper's pass" was to be in effect for five weeks and its purpose was to give the shopper a chance to visit the stores as often as she wants. It was also expected to level off the jagged peaks and valleys in the railway company's traffic load during the Christmas season, by stimulating non-rush hour riding and proportionately diminishing rush hour crowding.

This is an interesting experiment, and apparently a novel one—for it is one of the first times if not *the* first time, that a large city transit company has put into effect a special reduced rate for off-peak riding.

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 1930E NUMBER 6

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TITLES

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Public Utilities

FORTNIGHTLY

December 25, 1930

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THIS decision was based upon the belief—which the past two years has proven eminently sound—that only by frank and honest revelation of facts and by the frank and honest expression of opinions based upon facts can the truth be attained and policies adopted that will stand the test of usage.

* *

THE decision of the editors to feature articles on both sides of controversial topics in itself aroused controversy.

* *

"IT can't be done," the sceptics assured the editors.

* *

"THE state commissioners won't support a periodical that criticizes state regulation," warned some. "The public utilities won't support a magazine that features articles opposed to their interests," warned others. "The government ownership advocates and other liberals will brand you as a mere propaganda medium if you publish arguments opposed to their views, and they will suppress you" voiced others.

* *

BUT the experience of the past two years has proven these critics wrong.

* *

DURING this two-year period the circulation of this magazine has increased slightly more than 300 per cent—a remarkable advance that has justified the designation of "the world's fastest-growing fortnightly."

* *

DURING this period PUBLIC UTILITIES FORTNIGHTLY has featured expressions of opinions that run the gamut between the most conservative to the most radical; opinions on such live and timely topics, and from such authoritative sources, that they have been quoted and commented upon in the daily and periodical press throughout the country.

* *

AND all groups have expressed approval of this editorial policy not only in written endorsements, but in the substantial form of subscriptions.

* *

ONE of the latest, and certainly the most "official endorsement" and consequently one of the most gratifying, comes from the National Association of Railroad and Utility Commissioners.

* *

"IT is doubtful whether any other magazine in an equally limited field has ever surpassed in the first two years of its existence the record of PUBLIC UTILITIES FORTNIGHTLY," reported the Committee on Publication of Commissioners' Decisions of the Association at last month's annual convention in Charleston, S. C.

* *

THE report continued:

* *

"THE policy of conducting the FORTNIGHTLY as an open forum for the discussion of both sides of controversial questions within the field of regulation has been subjected to a practical test extending over a period of nearly two years, during which time 44 issues of the magazine have been

(*Continued on page VIII*)

COMMISSIONER H. LESTER HOOKER

"—A new campaign against the present system of regulation has begun."

(SEE PAGE 771)

published. During this period articles have been featured from men of diametrically opposed views, and all shades of both conservative and liberal opinion have been set forth. Your committee believes that this policy has been essentially informative and definitely helpful, and that it has justified the universal endorsement which the magazine has received from all groups. Therefore your Committee has advised the publishers to welcome joint debates, as principles cannot be altered nor sound policies affected by free and frank discussion."

* *

THAT this report was accepted without a single dissenting voice may be regarded by the editors as evidence of the fair-mindedness of the state commissioners in their efforts to shed the light of truth upon the perplexing and involved regulatory problems that confront them—even though various toes are stepped on in the process, including their own.

* *

SAINT THOMAS, somewhere in his treatise on government, observed:

* *

"WHEN one faces the necessity of choosing between two situations each of which threatens to be dangerous, it is absolutely essential to select one which will result in less evil."

* *

SUCH a situation is facing Uncle Sam right now in his grave task of regulating the railroads—an essential and therefore a tremendously important industry that is facing an economic crisis for which a remedy must be found.

* *

SHOULD the regulatory pressure on the railroads be relaxed and the burdens of taxation lightened, in order that they may be less hampered in their efforts to meet the rapidly-growing competition offered by the motor vehicle, the airplane, the water carrier and the pipe-line carrier?

* *

OR should the regulatory pressure be increased upon these lusty competitors of the railroads, so that the struggle may be better equalized?

* *

OR both?

* *

THE real rulers of the rails are not the railroad presidents at all—according to HERBERT COREY in his peculiarly significant article on pages 784 to 793 of this number; they are the government agencies which regulate them.

THE most important and the most responsible of these regulatory agencies is the Interstate Commerce Commission; consequently the opinions of one of its members, even though it be expressed informally and (for the present) anonymously, may be regarded as at least indicative of current trends.

* *

WHAT Federal regulation has accomplished in the case of the railroads, as illustrated both by the condition in which the carriers find themselves today as well as by the situation that looms in their path, raises a question of exceedingly vital and timely concern to other public utility interests—particularly and specifically at this juncture in the country's economic development when there is a definite movement afoot to extend Federal control in a manner that threatens to conflict with the authority of the state regulatory commissions.

* *

"FEDERAL and state regulation just don't mix," observed a state commissioner to the editors; "In the end, the big fish swallows the little fish."

* *

How these adjustments between the Federal and state regulatory commissions are to be brought about constitutes a highly controversial as well as a complicated nut that must sooner or later be cracked.

* *

PRACTICALLY this entire number of PUBLIC UTILITIES FORTNIGHTLY is devoted to this problem—principally to the views of the state commissioners, as they expressed them at their recent gathering in Charleston.

* *

THE contributors to this issue of PUBLIC UTILITIES FORTNIGHTLY are all old friends whose articles appear frequently in these columns; the only new-comer is COMMISSIONER H. LESTER HOOKER.

* *

COMMISSIONER HOOKER was born in Virginia; graduated from a Virginia college (Mary and William), and from a Virginia law school (Washington and Lee); practiced law in Virginia, and is now a member of the State Corporation Commission of Virginia—of which he was Chairman from 1928 to 1929. One may assume that he is a Virginian.

* *

THE next number will be the first of the new volume; it will be published January 8, 1931.

* *

HAPPY New Year!

—THE EDITORS.

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PROFESSIONAL DIRECTORY

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Managing Editor and Editorial Director, Kendall Banning	Washington, D. C.
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PUBLIC UTILITIES REPORTS, INC.
Henry C. Spurr, Editor

Sworn to and subscribed before me this 26th day of September, 1930.
Ellsworth Nichols.

(My commission expires March 31, 1931.)

INDEX TO ADVERTISERS

BETTER than the growing ability to meet the changes that the years bring — Better than the privilege of passing the triumphs and disasters into the record and forgetting — Better than the realization of a strengthened courage to meet each new future — Better and more warming is the mellowing of long associations into old friendships and the feeling which flows when you and I pause to wish each other

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